USADA and Floyd Landis
AAA No. 30 190 00847 06

United States Anti-Doping Agency's List of Exhibits*

Tab	Exhibit	Bates Numbers
1.	UCI Rules	
2.	Bylaws of the United States Olympic Committee	
3.	USADA Protocol for Olympic Movement Testing	
4.	World Anti-Doping Code	
5.	WADA 2006 Prohibited List	
6.	International Standard for Testing	
7.	Olympic Movement Anti-Doping Code	
8.	International Standard for Laboratories	
9.	TD2004EAAS	
10.	TD2004MRPL	
11.	TD2003LDOC	
12.	TD2003IDCR	
13.	USADA v. Hartman	
14.	Susin v. FINA	
15.	IAAF v. CBAt and Dos Santos	
16.	WADA v. Wium	
17.	IAAF v. Czech Athletic Federation and Roman Zubek	
18.	UCI v. Moller	

*USADA reserves the right to supplement these exhibits with any of the following materials: documents pertaining to the further analysis of Mr. Landis's other samples; documents related to discovery requests to Mr. Landis that are still pending; and any additional rebuttal exhibits necessary after review of Respondent's brief and exhibits, including any relevant demonstrative exhibits.

19.	UCI v. Bakker	
20.	UCI v. Skelde	
21.	UCI v. Danmarks	
22.	UCI v. Landaluce (English and French translations)	
23.	ISO/IEC 17025 (1999) and (2005)	USADA 1250-1318
24.	A Sample Laboratory Documentation Package	USADA 0001-0223
25.	B Sample Laboratory Documentation Package	USADA 0224-0370
26.	LNDD Documents	LNDD 0001-0519
27.	Respondent's Doping Control Form (CPLD Copy)	Produced by Landis
27a.	CPLD Copies of other riders doping control forms received by CPLD on July 27	
27b.	CPLD Copies of other riders doping control forms received by CPLD on July 28	
28.	Respondent's UCI License Application	USADA 1250-1252
29.	Longitudinal Study of Respondent's T/E Ratio	
30.	Longitudinal Study of Respondent's T/E Ratio Adjusted for Specific Gravity	
31.	Photograph of the type of cooler and metal band used to transport Respondent's sample	
32.	Color Photographs of LNDD operating the Isoprime instrument at 5E-6 mbar	
32a.	LNDD's Response to alleged IRMS Documentation Errors	
32b.	Documentation tracking sample 995474 CG-MS	
33.	Excerpt from Dr. Arnie Baker's PowerPoint Presentation	
34.	Cologne WADA Research Project Progress Report March 2007	
34a.	Cologne PowerPoint	

35.	UCLA Final Report on WADA Grant - Pharmacokinetics of Pharmaceutical Testosterone and TE in Subjects with Low and High Baseline TEs: The assessment of the ethnic differences and of the sensitivity of various carbon isotope ratio methods relative to TE, Don H. Catlin	
36.	UCLA Report to USADA on research subject IVT-1	
37.	Illustrations of Steroid Metabolism	
38.	Figures 1-21 from USADA Brief	
39.	Press Statements by Respondent • Sal Ruibal, *Synthetic testosterone found in Landis' 'B' sample; Tour winner likely to lose title,* USA TODAY, accessed Feb. 8, 2007, http://www.usatoday.com/sports/cycling/2006-08-04-landis-doping-test_x.htm • Associated Press, *Tour de France Champ Floyd Landis Requests Test of Backup Urine Sample in Doping Flap,* Fox News.com, Jul. 31, 2006, http://www.foxnews.com/printer_friendly_story/0,3566,206449,00.html • Sal Ruibal, *Landis fires back at cycling hierachy [sic],* USA TODAY, accessed Feb. 8, 2007, http://usatoday.printthis.clickability.com/pt/cpt?action=cpt&title=USATODAY.com+-+Lan...	

40.	Additional Science Articles	
	• *Validity of urine samples :microbial degradation. Recent advances in doping analysis*, Ayotte C., Charlebois, A., Lapointe, S., Barriault D. and Sylvestre M.	USADA 1154-1164
	• *Variability of T/E ratios in Athletes*, Baenziger J. and L. Bowers	USADA 1165-1170
	• *Issues in detecting abuse of xenobiotic anabolic steroids and testosterone by analysis of athlete's urine*, Catlin D. H., C. K. Hatton and S. H. Starcevic	USADA 1171-1179
	• *Long-term administration of testosterone enanthate to normal men: alterations of the urinary profile of androgen metabolites potentially useful for detection of testosterone misuse in sport,* Dehennin L. and A. M. Masumoto	USADA 1180-1190
	• *Evaluation of longitudinal studies, the determination of subject based reference ranges of the T/E ratio,* Donike M., S. Rauth, U. Mareck-Engelke, H. Geyer and R. Nitschke	USADA 1191-1194
	• *Stability of steroid profile (2) : excretion rates from morning urines,* Mareck-Engelke U., H. Geyer and M. Donike	USADA 1195-1197
	• *Improved method of detection of testosterone abuse by gas chromatography /combustion/ isotope ratio mass spectrometry analysis of urinary steroids,* Aguilera R., M. Becchi, H. Casabianca, C.K. Hatton, D. H. Catlin and B. Starcevic	USADA 1198-1205
	• *GC/C/IRMS and GC/MS in "Natural" Steroids Testing,* Ayotte C., D. Goudreault, A. Lajeunesse, M. Cléroux, Y. Richard, A. Charlebois, J. -P. Couture and A. Fakirian	USADA 1206-1211
	• *Kinetic isotope effects during metabolism of delta-4-steroids,* Flenker U. and Schanzer W	USADA 1212-1215
	• *Validity of carbon istope ration measurements for decomposed urine samples*, R. Taylor, A. Cawley, R. Kazlauskas, G. Trout & A. George	USADA 1216-1218
	• *Developments in Sports Drug Testing*; Trout, G., J. Rogerson; A. Cawley and C. Alma	USADA 1219-1224

	• *Performance Characteristics of a Carbon Isotope Ratio Method for Detecting Doping with Testosterone Based on urine Diols: Controls and Athletes with Elevated Testosterone/Epitestosterone Ratios*, Aguilera, R. T. Chapman, B. Starcevic, C. Hatton, D. Catlin	USADA 1225-1233
	• *Improved Detection of Sugar Addition to Maple Syrup Using Malic Acid as Internal Standard and in 13C Isotope Ratio Mass Spectrometry (IRMS)*, Tremblay, P. and R. Paquin	USADA 1234-1240
	• *Confirming Testosterone administration by isotope ratio mass spectrometric analysis of urinary androstanediols*, Shackleton, C., A. Phillips, T. Chang and Y. Li	USADA 1241-1249

41.	USADA Documents	USADA 0371-0475
42.	USADA Documents	USADA 0476-0731
43.	USADA Documents	USADA 0732-0970
44.	USADA Documents	USADA 0971-1002
45.	USADA Documents	USADA 1003-1007
46.	USADA Documents	USADA 1008-1137
47.	USADA Documents	USADA 1138-1153
48.	Excerpt from Operating Manual for IsoPrime (Pg 103)	
49.	WADA Documents	WADA 0001-0143

TAB 1

PART 14 ANTI-DOPING RULES OF THE UCI

(new rules entered into force on 13 August 2004)

INTRODUCTION

Pursuant to amendments adopted by the 115th session of the International Olympic Committee in July 2003, the Olympic Charter stipulates that in order to be recognized by the IOC, an International Federation must adopt and implement the World Anti-Doping Code (Rule 29).

To be eligible for a participation in the Olympic Games, a competitor, coach, trainer or official must respect and comply in all aspects with the World Anti-Doping Code (Rule 45).

As a consequence, at its meeting of 22-23 July 2004, the UCI Management Committee decided to accept the World Anti-Doping Code and to incorporate the Code in UCI's Regulations, as is done in these Anti-Doping Rules.

Terms in italiques are defined in oppendix 1.

ANTI-DOPING RULES OF THE UCI

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Chapter SCOPE

1. These Anti-Doping Rules shall apply to all *License-Holders.*

In-Competition Testing

2. *Riders* participating in *International Events* shall be subject to *In-Competition Testing* under these Anti-Doping Rules.

Riders participating in *National Events* shall be subject to *In-Competition Testing* initiated and directed by the *National Anti-Doping Organization* of the country or any other organization or person so authorized by that *National Anti-Doping Organization. Doping Control* shall be governed by the anti-doping rules of *the National Anti-Doping Organization.*

Comment: As results from the above article, these Anti-Doping Rules do not apply at National Events.

3. *In-Competition Testing* at *International Events* may be initiated and directed by the UCI or by the National Federation of the country or any other organization or person so authorized by the UCI. *Doping Control* shall be governed by these Anti-Doping Rules exclusively.

4. If the UCI decides not to conduct any *Testing* at an *International Event,* the *National Anti-Doping Organization* for the country where the *Event* takes place, may initiate and conduct such *Testing* in coordination with and with the approval of the UCI or, if the UCI withholds its approval, with the approval of *WADA.* In such cases, *Doping Control* shall be governed by the anti-doping rules of that *National Anti-Doping Organization.*

5. *Riders* shall be subject to *In-Competition Testing* at the Olympic Games, the Paralympic Games and events of *Major Event Organizations.*

Doping Control shall be governed by the rules of the International Olympic Committee, the International Paralympic Committee and the *Major Event Organizations* respectively. However, results management and the conduct of hearings shall be referred to the UCI as far as sanctions beyond *Disqualifications* from the event or the results of the event.

Out-of-Competition Testing

6. Riders shall be subject to *Out-of-Competition Testing.*

7. *Out-of-Competition Testing* may be initiated and conducted by the UCI or by the National Federation of the country or any other organization or person so authorized by the UCI.

Doping Control shall be governed by these Anti-Doping Rules exclusively.

8. *Riders* shall also be subject to *Out-of-Competition Testing* initiated and conducted by any other *Anti-Doping Organization* that is so authorized under the *Code:*

1. *WADA;*
2. The International Olympic Committee or the International Paralympic Committee in connection with the Olympic Games or Paralympic Games;
3. The *National Anti-Doping Organization* of the *Rider;*
4. The *National Anti-Doping Organization* of any country where the *Rider* is present.

Doping Control shall be governed by the anti-doping rules of the *Anti-Doping Organization* concerned.

However, results management and the conduct of hearings from a test by the International Olympic Committee or the International Paralympic Committee shall be referred to the UCI as far as sanctions beyond *Disqualification* from the event or the results of the event.

Comment: *1) As is expressed in the above article, any Rider may be tested Out-of-Competition by any of the above mentioned organizations, according to the rules of the organization conducting the test.*

2) National Federations may not initiate and conduct Out-of-Competition testing, including on their national level Riders, unless so authorized by the UCI or another Anti-Doping Organization.

Anti-doping violations where no *Sample* collection is involved

9. The UCI has jurisdiction for and these Anti-Doping Rules shall apply to any anti-doping violation committed by a *License-Holder* where no *Sample* collection is involved and that is discovered:

(i) by the UCI, by one of its constituents or member Federations, by one of their officials, officers, staff members, members, *License-Holders,* or any other body or individual that is subject to the regulations of the UCI or one of its member Federations; or

(ii) by a body or individual that is not an *Anti-Doping Organization.*

10. If an anti-doping violation where no *Sample* collection is involved is discovered by another *Anti-Doping Organization,* the anti-doping rules of that *Anti-Doping Organization* shall apply.

However, if the violation is discovered by the International Olympic Committee or the International Paralympic Committee, results management and the conduct of hearings shall be referred to the UCI as far as sanctions beyond *Disqualification* from the event or the results of the event.

Results management concerning foreign or non-resident *Riders*

11. Results management and the conduct of hearings for an anti-doping rule violation arising from a test by, or discovered by, a *National Anti-Doping Organization* involving a *License-Holder* that is not a citizen or resident of that country shall be administered by and under the rules of that *National Anti-Doping Organization.*

Unauthorized *Testing*

12. If a *Rider* refuses a test by an *Anti-Doping Organization* that has no authority to test under these Anti-Doping Rules or under the *Code,* such refusal shall not constitute an anti-doping violation under these Anti-Doping Rules.

13. If a *Rider* has been tested by an *Anti-Doping Organization* that has no authority to test under these Anti-Doping Rules or under the *Code* and the test results in an *Adverse Analytical Finding,* the UCI shall have jurisdiction and these Anti-Doping Rules shall apply.

General comment:
1) Under the Code, National Federations have no jurisdiction in Doping Control.

However, Anti-Doping Organizations having jurisdiction under the Code, may delegate jurisdiction to National Federations.

The involvement of National Federations in doping control at the international level is laid down in these Anti-Doping Rules.

National Federations and their respective National Anti-Doping Organization may agree on the Federation's involvement in Doping Control at the national level.

2) In addition to the obligations to submit to Testing pursuant to these Anti-Doping Rules and the Code, Riders may also be obliged to submit to Testing and be sanctioned for anti-doping violations pursuant to local anti-doping law.

II Chapter DOPING

Definition of doping

14. Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in article 15.

Anti-doping rule violations

15. The following constitute anti-doping rule violations:

1. The presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in a *Rider's* bodily *Specimen.*

 1.1. It is each *Rider's* personal duty to ensure that no *Prohibited Substance* enters his body. *Riders* are responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in their bodily *Specimens.* Accordingly, it is not necessary that intent, fault, negligence or knowing *Use* on the *Rider's* part be demonstrated in order to establish an anti-doping violation under article 15.1.

 Warning:
 1) Riders must refrain from using any substance, foodstuff, food supplement or drink of which they do not know the composition. It must be emphasized that the composition indicated on a product is not always complete. The product may contain Prohibited Substances not listed in the composition.
 2) Medical treatment is no excuse for using Prohibited Substances or Prohibited Methods, except where the rules governing Therapeutic Use Exemptions are complied with.

 1.2. Excepting those substances for which a threshold concentration is specifically identified in the *Prohibited List,* the detected presence of any quantity of a *Prohibited Substance* or its *Metabolites* or *Markers* in a *Rider's Sample* shall constitute an anti-doping rule violation.

 1.3. As an exception to the general rule of article 15.1, the *Prohibited List* may establish special criteria for the evaluation of *Prohibited Substances* that can also be produced endogenously.

2. *Use* or *Attempted Use* of a *Prohibited Substance* or a *Prohibited Method.*

 2.1 The success or failure of the *Use* of a *Prohibited Substance* or *Prohibited Method* is not material. It is sufficient that the *Prohibited Substance* or *Prohibited Method* was *Used* or *Attempted* to be *Used* for an anti-doping rule violation to be committed.

3. Evading *Sample* collection or, after notification as authorized under these Anti-Doping Rules, refusing, or failing without compelling justification, to submit to *Sample* collection or, regarding the *Riders* referred to in article 122, to check in for *Sample* collection.

4. Violation of the requirements regarding *Rider* availability for *Out-of-Competition Testing* including failure to provide required whereabouts information and missed tests as set forth in article 86.

5. *Tampering,* or *Attempting* to tamper, with any part of *Doping Control.*

6. *Possession* of *Prohibited Substances* and *Methods.*

6.1 *Possession* by a *Rider* at any time or place of a *Prohibited Substance* or a *Prohibited Method* referred to in article 15.6.3 below, unless the *Rider* establishes that the *Possession* is pursuant to a Therapeutic Use Exemption granted in accordance with chapter IV or other acceptable justification.

6.2 *Possession* of a *Prohibited Substance* or a *Prohibited Method* referred to in article 15.6.3 below, by *Rider's Support Personnel* in connection with a *Rider, Event* or *training,* unless the *Rider's Support Personnel* establishes that the *Possession* is pursuant to a therapeutic use exemption granted to a *Rider* in accordance with chapter IV or other acceptable justification.

6.3 In relation to *Possession,* the following categories of substances and methods of the *Prohibited List* are prohibited:

Categories of *Prohibited Substances:*
- S1. Anabolic agents
- S2. Hormones and related substances
- S3. Beta-2 agonists
- S4. Agents with anti-oestrogenic activity
- S5. Diuretics and other masking agents

Categories of *Prohibited Methods:*
- M1. Enhancement of oxygen transfer
- M2. Chemical and physical manipulation
- M3. Gene doping

7. *Trafficking* in any *Prohibited Substance* or *Prohibited Method.*

8. Administration or *Attempted* administration of a *Prohibited Substance* or *Prohibited Method* to any *Rider,* or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any *Attempted* violation.

Proof of doping

Burdens and standards of proof

16. The UCI and its National Federations shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI or its National Federation has established an anti-doping rule violation to the comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the *Rider* or other *Person* alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

Methods of establishing facts and presumptions

17. Facts related to anti-doping rule violations may be established by any reliable means, including admissions.

18. *WADA*-accredited laboratories or as otherwise approved by *WADA* are presumed to have conducted *Sample* analysis and custodial procedures in accordance with the *International Standard* for laboratory analysis. The *Rider* may rebut this presumption by establishing that a departure from the *International Standard* occurred.

If the *Rider* rebuts the preceding presumption by showing that a departure from the *International Standard* occurred, then the UCI or the National Federation shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding*.

19. Departures from these Anti-Doping Rules, the *Procedural Guidelines* set by the Anti-Doping Commission or the *International Standard* for *Testing* which did not cause an *Adverse Analytical Finding* or other anti-doping rule violation shall not invalidate such findings or results. If the *Rider* establishes that departures from these Anti-Doping Rules, the *Procedural Guidelines* or the *International Standard* occurred during *Testing* then the UCI or its National Federation shall have the burden to establish that such departures did not cause the *Adverse Analytical Finding* or the factual basis for the anti-doping rule violation.

20. Any *Anti-Doping Inspector, Medical Inspector,* commissaire or official shall draw up a detailed report of any anti-doping rule violation and of any incident, anomaly or irregularity concerning *Testing* which he may observe or which may be reported to him. He shall note the identity of any witnesses. Witness statements may be included in the report and countersigned by the witnesses. This report and all the supporting documentation must be sent without delay to the UCI Anti-Doping Commission.

Chapter III THE *PROHIBITED LIST*

21. These Anti-Doping Rules incorporate the *Prohibited List* which is published and revised by *WADA* as described in article 4.1 of the *Code*. The UCI will publish the current *Prohibited List* also in UCI's Official News Bulletin.

Comment: *1) the Prohibited List currently in force may also be found on UCI's website at www.uci.ch.*

2) Most sections of the Prohibited List refer to categories of Prohibited Substances or Prohibited Methods, while only a limited number of these Substances or Methods are listed under that category; yet other Substances or Methods than those recited are prohibited as is indicated for the respective categories.

3) *The Prohibited List relates to a sports regulation. The Use or Possession of, and Traffic in, a number of substances on the List is also prohibited or regulated in the national laws of many countries. Criminal sanctions may apply. A substance or method that is not prohibited under the List may be prohibited or regulated under national law.*

22. Unless provided otherwise in the *Prohibited List* and/or a revision, the *Prohibited List* and revisions shall go into effect under these Anti-Doping Rules 3 (three) months after publication of the *Prohibited List* by *WADA* on *WADA's* website at www.wada-ama.org, without requiring any further action by the UCI.

23. *WADA's* determination of the *Prohibited Substances* and *Prohibited Methods* that are or will be included on the *Prohibited List* shall be final and not subject to challenge by a *License-Holder.*

IV Chapter THERAPEUTIC USE EXEMPTION (TUE)

24. *Riders* with a documented medical condition requiring the *Use* of a *Prohibited Substance* or a *Prohibited Method* must, prior to their participation in any *International Event,* obtain a Therapeutic Use Exemption (TUE) from the UCI, regardless of whether the *Rider* previously has received a TUE from his *National Anti-Doping Organization.*

However, *Riders* of the juniors and masters categories shall obtain a TUE from their *National Anti-Doping Organization* or such authority as appointed by their *National Anti-Doping Organization.*

25. *Riders* with a documented medical condition requiring the *Use* of a *Prohibited Substance* or a *Prohibited Method* who are not planning to participate in an *International Event* must, prior to their participation in any *National Event,* obtain a Therapeutic Use Exemption from their *National Anti-Doping Organization* or such authority as appointed by their *National Anti-Doping Organization.* The procedure for granting such TUE is governed by the rules of that *National Anti-Doping Organization.*

26. The following articles of this chapter IV govern TUE's requested from the UCI.

27. A Therapeutic Use Exemption is granted according to a standard procedure (articles 38 - 45). For the *Prohibited Substances* or *Prohibited Methods* referred to in article 47, an abbreviated procedure is also available (articles 46 - 50).

28. Decisions regarding the grant, withdrawal and denial of TUE's are taken in the first instance by the Therapeutic Use Exemption Committee of the UCI.

Therapeutic Use Exemption Committee (TUEC)

29. The UCI shall appoint a committee of at least 3 (three) physicians to consider requests for TUE's: the Therapeutic Use Exemption Committee (TUEC).

30. The members of the TUEC, or at least 3 (three) of them, shall be physicians with experience in the care and treatment of athletes and a sound knowledge of clinical, sports and exercise medicine.

31. A majority of the members of the TUEC should not have any official responsibility in the UCI or a National Federation. All members of the TUEC will sign a conflict of interest agreement.

32. The TUEC may seek whatever medical or scientific expertise it deems appropriate in reviewing the circumstances of any application for a TUE.

33. In applications involving *Riders* with disabilities, advice shall be sought from an expert possessing specific experience with the care and treatment of athletes with disabilities, if no member of the TUEC possesses such experience.

34. Upon the UCI's receipt of a TUE application, the Chair of the TUEC shall appoint one or more members of the TUEC (which may include the Chair) to consider such application and render a decision promptly.

Criteria for granting a Therapeutic Use Exemption

35. A Therapeutic Use Exemption will be granted only in strict accordance with the following criteria:

1. The *Rider* should submit an application for a TUE on a form provided by the UCI no less than 21 (twenty-one) days before participating in an *Event*.
2. The *Rider* would experience a significant impairment to health if the *Prohibited Substance* or *Prohibited Method* were to be withheld in the course of treating an acute or chronic medical condition.
3. The therapeutic use of the *Prohibited Substance* or *Prohibited Method* would produce no additional enhancement of performance other than that which might be anticipated by a return to a state of normal health following the treatment of a legitimate medical condition. The *Use* of any *Prohibited Substance* or *Prohibited Method* to increase "low-normal" levels of any endogenous hormone is not considered an acceptable therapeutic intervention.
4. There is no reasonable therapeutic alternative to the *Use* of the otherwise *Prohibited Substance* or *Prohibited Method*.
5. The necessity for the use of the otherwise *Prohibited Substance* or *Prohibited Method* cannot be a consequence, wholly or in part, of prior non-therapeutic *Use* of any *Prohibited Substance* or *Prohibited Method*.
6. An application for a TUE will not be considered for retroactive approval except in cases where:
 a. Emergency treatment or treatment of an acute medical condition was necessary, or
 b. Due to exceptional circumstances, there was insufficient time or opportunity for a *Rider* to submit an application 21 (twenty-one) days prior to his participation in any *Event*, or the TUEC to consider the application prior to the *Rider's* participation in any *Event*.

36. A TUE shall be denied on the ground of the impossibility or difficulty to control the dose, frequency, route of administration or any other aspect of the *Use* of a *Prohibited Substance* or *Prohibited Method,* that may produce enhancement of performance other than that allowed under article 35.3.

37. The TUEC may submit the granting of a TUE to any conditions that it may specify.

Standard Therapeutic Use Exemption procedure

38. A TUE will only be considered following the receipt of:
(i) a legibly completed application form that complies with these Anti-Doping Rules and that must include all relevant information and documents, and
(ii) an application fee, the amount of which shall be set annually by the Management Committee.

Warning: Any file that is not complete or not legible will not be considered as valid and will be returned to the sender.

39. The TUE application form(s), as set out in the *International Standard* for Therapeutic Use Exemptions, can be modified by the UCI Anti-Doping Commission to include additional requests for information, but no sections or items shall be removed.

40. The TUE application form(s) shall be completed legibly, in English or French. Any information attached to the TUE application form shall be in English or French. If such information has been originally established in another language, the *Rider* shall attach the original document and a translation in English or French.

41. A *Rider* may not apply to more than one *Anti-Doping Organization* for a TUE. The application must list any previous and/or current requests for permission to use an otherwise *Prohibited Substance* or *Prohibited Method,* the body to whom that request was made, and the decision of that body.

42. The application must include a comprehensive medical history and the results of all examinations, laboratory investigations and imaging studies relevant to the application.

Any additional relevant investigations, examinations or imaging studies requested by the TUEC will be undertaken at the expense of the *Rider.*

43. The application must include a statement by an appropriately qualified physician attesting to the necessity of the otherwise *Prohibited Substance* or *Prohibited Method* in the treatment of the *Rider* and describing why an alternative, permitted medication cannot, or could not, be used in the treatment of this condition.

The dose, frequency, route and duration of administration of the otherwise *Prohibited Substance* or *Prohibited Method* in question must be specified.

44. The decision of the TUEC will be conveyed in writing to the *Rider* by the Anti-Doping Commission.

45. Where a TUE has been granted, the *Rider* and *WADA* will be promptly provided with a certificate of approval for therapeutic use which includes information pertaining to the duration of the exemption and any conditions associated with the TUE. *WADA* will also be provided with all supporting documentation.

The *Rider* shall carry a copy of the certificate with him at all times and present it to the *Anti-Doping Inspector* at the time of *Testing*.

Abbreviated Therapeutic Use Exemption procedure

46. It is acknowledged that some substances included on the *Prohibited List* are used to treat medical conditions frequently encountered in the athlete population. In such cases, a full application as detailed in article 35.4, and articles 38 - 45, is unnecessary. Accordingly an abbreviated process of the TUE is established.

47. The *Prohibited Substances* or *Prohibited Methods* which may be permitted by this abbreviated process are strictly limited to the following: beta-2 agonists (formoterol, salbutamol, salmeterol and terbutaline) by inhalation and glucocorticosteroids by non-systemic routes.

48. Approval for *Use* of one of the *Prohibited Substances* referred to in article 47 is effective upon receipt of a complete notification by the UCI.

The diagnosis and when applicable any tests undertaken in order to establish that diagnosis should be included (without the actual results or details).

Articles 39, 40 and 43 apply.

Notifications that are incomplete, illegible or do not comply with these Anti-Doping Rules, shall carry no exemption and shall be returned to the applicant.

49. The UCI will advise *WADA* and the *Rider's* National Federation and *National Anti-Doping Organization* on receipt of a regular notification.

The UCI will provide *WADA* with the application for the TUE.

50. A notification for a TUE will not be considered for retroactive approval except in cases where:
- emergency treatment or treatment of an acute medical condition was necessary, or
- due to exceptional circumstances, there was insufficient time or opportunity for a *Rider* to submit, or the UCI to receive, the application prior to the *Rider's* participation in any *Event*.

Confidentiality of information

51. By applying for a TUE, the *Rider* provides consent for the transmission of all information pertaining to the application to members of the TUEC of the UCI and the TUEC of *WADA* and, as required, other independent medical or scientific experts, or to all necessary staff involved in the management, review or appeal of TUEs and for the decisions of the TUECs to be distributed to other relevant *Anti-Doping Organizations* under the provisions of the *Code*.

52. Should the *Rider* wish to revoke the right of the TUEC of the UCI or the TUEC of *WADA* to obtain any health information on his behalf, the *Rider* must notify his medical practitioners in writing of the fact. As a consequence of such a decision, the *Rider* will not receive approval for a TUE or renewal of an existing TUE.

53. Should the assistance of external, independent experts be required, all details of the application will be circulated without identifying the *Rider* and the medical practitioners involved in the *Rider's* care.

54. The members of the TUECs and the administration of the *Anti-Doping Organizations* involved will conduct all of their activities in strict confidence.

Duration of TUE

55. Each TUE will have a specified duration as decided upon by the TUEC. The duration shall be indicated in the certificate of approval for therapeutic use.

No TUE may have a duration of more than 1 (one) year. It may be renewed.

The TUE expires at the end of its duration.

Withdrawal of TUE

TUE granted under standard procedure

56. The TUEC of the UCI may review and withdraw the TUE at any time during the duration of the TUE.

57. The decision of the TUEC of the UCI withdrawing the TUE and the decision of *WADA* or the CAS reversing the granting of the TUE, shall take effect 14 (fourteen) days following notification of the decision to the *Rider*, unless the decision sets a shorter term.

TUE granted under abbreviated procedure

58. The TUEC of the UCI and the TUEC of *WADA* may review and withdraw the TUE at any time during the duration of the TUE.

59. A decision of the TUEC of the UCI or the TUEC of *WADA* withdrawing the TUE and a decision of the CAS reversing the granting of the TUE, shall take effect immediately following notification of the decision to the *Rider*.

The *Rider* will nevertheless be able to apply for a TUE in accordance with the standard procedure.

Results before withdrawal

60. The withdrawal of a TUE and the decision reversing the granting of a TUE shall not apply retroactively. They shall not disqualify the *Rider*'s results before the moment that the decision takes effect.

Results after expiry or withdrawal

61. The Anti-Doping Commission, when conducting the initial review of an *Adverse Analytical Finding*, will consider whether the finding is consistent with expiry or withdrawal of the TUE.

Information

62. The *Rider* and all relevant *Anti-Doping Organizations* shall be notified immediately of any decision withdrawing a TUE or reversing the granting of a TUE.

Review by *WADA* and appeal to the CAS

Review by *WADA* at the request of the *Rider*

63. The *Rider* may request *WADA* to reverse the decision by which the TUEC of the UCI denies or withdraws a TUE.

64. The *Rider* shall provide to the TUEC of *WADA* all the information for a TUE as submitted initially to the UCI, accompanied by the application fee that *WADA* may request. The TUEC of *WADA* will have the ability to request from the *Rider* additional medical information as deemed necessary, the expenses of which shall be met by the *Rider*.

65. Until the review process has been completed, the decision of the UCI remains in effect.

66. If *WADA* reverses the decision of the UCI, the reversal shall not apply retroactively. The *Rider* shall not be entitled to compensation by the UCI, in particular for missed participations in *Events*.

67. The decision by *WADA* reversing the decision by the UCI may be appealed exclusively to the CAS by the UCI.

68. If *WADA* confirms the decision by the UCI, the *Rider* may appeal the decisions by UCI and *WADA* exclusively to the CAS.

69. The time limit for appeal with the CAS is 1 (one) month following receipt of the decision by *WADA*.

Review by *WADA* on its own initiation

70. *WADA* may, on its own initiation, review and reverse at any time the decision by which the TUEC of the UCI denies or withdraws a TUE.
Articles 64 to 69 shall apply.

71. *WADA* may, on its own initiation, review and reverse at any time the grant of a TUE by the UCI.

72. The decision by *WADA* reversing the grant of the TUE by the UCI may be appealed exclusively to the CAS by the *Rider* or the UCI.

73. The time limit for appeal with the CAS is 1 (one) month following receipt of the decision by *WADA*.

V Chapter WHEREABOUTS INFORMATION

Registered Testing Pool

74. The Anti-Doping Commission shall identify a UCI *Out-of-Competition Registered Testing Pool* of those *Riders* who are required to provide up-to-date whereabouts information to the UCI.

Comment: only the Riders included in the Registered Testing Pool are required to provide whereabouts information; however any Rider may be tested Out-of-competition at any time and at any place, even if he is serving a period of Ineligibility.

75. The Anti-Doping Commission shall define the criteria for *Riders* to be included in the *Registered Testing Pool* and may also include *Riders* individually. The Anti-Doping Commission may revise the *Registered Testing Pool* from time to time as appropriate.

76. A *Rider* continues to be included in the *Registered Testing Pool* and to be required to provide up-to-date whereabouts information to the UCI until he has been informed by the Anti-Doping Commission that he has been removed from the *Registered Testing Pool. Riders* that serve a period of *Ineligibility* continue to be included in the *Registered Testing Pool* and to be required to provide whereabouts information.

77. A *Rider* who has given notice of retirement from cycling to the UCI may not resume competing at international level unless he notifies the UCI at least 6 (six) months in advance before he expects to return to international competition and is available for unannounced *Out-of-Competition Testing*, at any time during the period before actual return to competition.

Notice of retirement is effective only when the *Rider* has returned his license to his National Federation for that purpose.

Whereabouts information requirements

78. The Anti-Doping Commission shall inform each *Rider* in the *Registered Testing Pool* via written notice that he has been included in the pool and must provide accurate whereabouts information in accordance with these Anti-Doping Rules and with any further instructions that the Anti-Doping Commission may deem appropriate.

The notice shall set the deadline for when the *Rider* is required to submit whereabouts information. This deadline shall be no earlier than 3 (three) weeks after sending the notice and no later than 2 (two) weeks prior to the start of the quarter.

The *Rider* shall confirm written receipt of such notice directly to the Anti-Doping Commission.

79. Each *Rider* in the *Registered Testing Pool* shall file quarterly reports with the Anti-Doping Commission on forms provided by the UCI which specify on a daily basis the locations and times where the *Rider* will be residing, training and competing.

80. Should a *Rider*'s plans change from those originally submitted on the whereabouts information forms, the *Rider* shall immediately send updates of all information required in the form so that it is current at all times.

81. The *Rider* shall send his whereabouts information and updates to the Anti-Doping Commission by fax. The *Rider* may also provide whereabouts information and updates by electronic means, once an appropriate electronic system is in place and the *Rider* is informed accordingly.

Failure to comply

82. If whereabouts information is not received in time or is incomplete or inadequate or inaccurate, the Anti-Doping Commission shall provide a written warning to the *Rider.*

Should the *Rider* after the written warning not provide accurate whereabouts information within 7 (seven) days, the *Rider* shall be provided an additional written warning.

83. A failure to comply with a written warning shall be recorded, unless the Anti-Doping Commission accepts a reasonable justification.

84. Should the *Rider* not be located for *Testing* based on the most up-to-date information received from the *Rider,* the Anti-Doping Commission shall report the missed test, in writing, to the *Rider.*

The *Rider* shall have the right to provide a written explanation and to prove circumstances within 10 (ten) days from the sending of the report.

If the Anti-Doping Commission, after having considered the explanations and evidence provided by the *Rider,* finds the explanation not justified, it shall record a missed test and inform the *Rider.*

85. For each attempt to locate the *Rider* for *Testing,* the *Anti-Doping Inspector* shall visit all locations during the times specified by the *Rider* for that date and shall stay 1 (one) hour at each location (or until such moment that the *Rider* had announced to stay at that location, if earlier).

86. Should, in a rolling period of 18 (eighteen) months, a *Rider* receive 3 (three) recorded warnings for failure to provide accurate whereabouts information or a combination of failure to provide accurate whereabouts information and missed tests equals 3 (three), an anti-doping violation has occurred.

The Anti-Doping Commission will notify the *Rider*'s National Federation and request it to initiate disciplinary proceedings for an anti-doping violation under article 15.4.

87. *Rider*'s failure to provide accurate whereabouts information and/or missed tests under these Anti-Doping Rules may be combined with failures to provide accurate whereabouts information and/or missed tests recorded by other *Anti-Doping Organizations*, provided (i) the *Anti-Doping Organization* had authority under the *Code*, (ii) the Anti-Doping Commission was informed in time and (iii) the facts recorded by the *Anti-Doping Organization* constitute, to the satisfaction of the Anti-Doping Commission, a failure to provide accurate whereabouts information or a missed test under these Anti-Doping Rules.

Coordination with *Anti-Doping Organizations*

88. The UCI may collect whereabouts information also with the National Federations, *WADA* and other *Anti-Doping Organizations*.

89. The UCI will make the list of *Riders* in the *Registered Testing Pool* available to *WADA*. The UCI may make the list available to other *Anti-Doping Organizations*.

90. The UCI will submit all whereabouts information to *WADA* and *WADA* will make this information accessible to other *Anti-Doping Organizations* having authority to test the *Rider* as provided in article 8.

91. The UCI may provide whereabouts information to other *Anti-Doping Organizations* having authority to test the *Rider* as provided in article 8.

Confidentiality

92. The UCI shall maintain whereabouts information in strict confidence at all times and shall use it exclusively for purposes of planning, coordinating or conducting *Testing*. The UCI shall destroy the whereabouts information after it is not longer relevant for these purposes.

93. Under the Code, *WADA* and all *Anti-Doping Organizations* having accepted the *Code* are bound to the same obligations concerning confidentiality of whereabouts information.

However, the UCI shall not be liable for the use that *WADA* or any *Anti-Doping Organization* makes of whereabouts information, even if the information was provided by the UCI. The *Rider* has no claim against the UCI in this respect.

Obligations of National Federations

94. National Federations shall assist the UCI in obtaining whereabouts information concerning *Riders* as requested by the UCI.

95. Each National Federation shall assist its *National Anti-Doping Organization* in establishing the latter's registered testing pool of national level *Riders*.

VI Chapter TESTING

Procedural Guidelines

96. The Anti-Doping Commission shall issue *Procedural Guidelines* for all aspects of *Testing* conducted under these Anti-Doping Rules.

Procedural Guidelines shall be in conformity with these Anti-Doping Rules and in substantial conformity with the *International Standard for Testing*.

Procedural Guidelines shall be binding upon their approval by the President of the UCI.

97. In addition, the President of the Anti-Doping Commission and the *Anti-Doping Inspector* may at any time impose measures which are urgently required to ensure that *Testing* can take place.

Management

98. Except as provided in articles **107,** 108, 109 and 153, *Testing* is conducted by an *Anti-Doping Inspector* and a *Medical Inspector*.

(text modified on 1.01.07).

99. The *Anti-Doping Inspector* is responsible for the on site management of the *Testing*.

100. For World Championships, the Management Committee shall appoint a UCI official doctor who shall be a member of the Anti-Doping Commission or a doctor proposed by the Anti-Doping Commission. The UCI official doctor is responsible for the on site management of the *Testing* at World Championships. He may act as *Medical Inspector*.

101. The *Anti-Doping Inspector* is appointed by the Anti-Doping Commission or, in case of urgency, by its President or his replacement.

However, the *Anti-Doping Inspector* shall be appointed by the National Federation of the country in the following cases:

1. for *Post-Competition Testing* at *Events* on the B list according to article 112, c;
2. for *Post-Competition Testing* at *Events* at which the National Federation is authorized to test by the UCI according to article 3;

3. for *Out-of-Competition Testing* that the National Federation is authorized to conduct on *Riders* by the UCI.

102. The *Medical Inspector* shall be responsible for the sample taking as described in these Anti-Doping Rules and in the *Procedural Guidelines.*

103. The *Medical Inspector* for *In-Competition Testing* shall be a doctor.

104. For *In-Competition Testing,* the *Medical Inspector* shall be appointed by the organizer's National Federation. The race doctor shall not be appointed as *Medical Inspector* for *Testing* at the *Event.*

105. The organizer's National Federation shall also appoint a female nurse to attend the delivery of the sample from women if the *Medical Inspector* is a man and a male nurse to attend the delivery of the sample from men if the *Medical Inspector* is a woman.

106. If needs be and without prejudice to the responsibility of the National Federation, the *Anti-Doping Inspector* may appoint a *Medical Inspector* and/or a nurse on the spot.

107. For *Out-of-Competition Testing,* **a** *Medical Inspector* **is not required to be appointed and the tasks and responsibilities otherwise entrusted to the *Medical Inspector* shall be carried out by the *Anti-doping Inspector.***

(text modified on 1.01.07).

108. The Anti-Doping Commission and, in the case of article 7, the National Federation may arrange to have *Out-of-Competition Testing* carried out by another *Anti-Doping Organization* or by a specialist institute or company. The tasks of the *Anti-Doping Inspector,* ***Medical Inspector*** **and person witnessing the delivery of the sample** shall be carried out by the persons or the single person designated for such a purpose by the organization, institute or company in question.

(text modified on 1.01.07).

109. Article 108 shall also apply where a National Federation is authorized to conduct *In-Competition Testing,* unless decided otherwise by the Anti-Doping Commission.

110. The *Medical Inspector* may be assisted by another doctor or a nurse.

111. For the taking of *Samples* other than urine *Samples* any person with the appropriate qualifications may be appointed.

Post-Competition Testing

112. A *Post-Competition Testing* session shall be organized at the following *Events:*

a) World Championships, Continental Championships and Regional Games, as per the *Procedural Guidelines;*

b) World record and continental record attempts;
c) Any other *Event* designated by the Anti-Doping Commission; these *Events* shall be included on the A list or the B list, depending on whether the *Anti-Doping Inspector* is appointed by the Anti-Doping Commission (A list) or the National Federation of the organizer (B list), in accordance with article 101.

113. At stage races where *Testing* takes place, a *Post-Competition Testing* session shall be organized following each stage unless determined otherwise by the Anti-Doping Commission.

114. At six-day events, *Post-Competition Testing* shall be organized on a minimum of 2 (two) days.

National Federation

115. The National Federation of the organizer of the *Event* shall be responsible for the practical aspects of the organization of the *Post-Competition Testing* session, including the obligations on the organizer. It must insure that all staff and all infrastructure and equipment are available so that *Testing* can be carried out in accordance with these Anti-Doping Rules and the *Procedural Guidelines.*

116. Without prejudice to the application of article 12.1.008 of the Cycling Regulations to the organizer, in the event of negligence in the practical organization of the *Testing* session the National Federation of the organizer shall be liable to a fine not exceeding 10'000 CHF. In *Events* which last more than one day, the fine may be multiplied by the number of days for which the negligence continues.

117. If, as a result of negligence during the practical organization of the *Testing* session, the *Anti-Doping Inspector* appointed by the Anti-Doping Commission is unable to carry out his mission properly, the National Federation and the organizer shall be jointly and severally liable to repay his expenses.

Doping control station

118. Premises suitable for the taking of *Samples* must be provided in the immediate vicinity of the finish line. The location must be clearly signposted from the finish line.

119. Should the circumstances justify it, the Anti-Doping Commission may grant an exemption to the requirement of immediate vicinity. The organizer or his National Federation must submit a fully documented request to the Anti-Doping Commission no later than one month before the start of the *Event.*

120. At the request of the *Anti-Doping Inspector,* the organizer shall appoint an official to protect the entrance of the doping control station and prevent access by persons not involved in *Testing.*

Selection of *Riders* to be tested

121. The *Riders* to be tested shall be as designated in the *Procedural Guidelines.*

The Anti-Doping Commission may also issue confidential instructions to the Anti-Doping Inspector for the selection of *Riders* to be tested in a particular *Event.*

122. For each *Competition* or *Race* for which a *Post-Competition Testing* session is organized, the *Anti-Doping Inspector* shall draw lots for a first and a second reserve *Rider* who will be subjected to testing in that order if a *Rider* drawn by lot is required to undergo tests as a result of his placing or if a *Rider* meets two criteria for selection simultaneously or if one such *Rider* is unable for practical reasons to undergo *Sample* taking, so that the number of tests called for by the Anti-Doping Commission is carried out.

The reserve *Riders* must check in for *Sample* collection within the prescribed time limit, even if they would not be required to submit to *Sample* collection.

123. The circumstances that another *Rider* was tested than those selected according to the *Procedural Guidelines* or the instructions of the Anti-Doping Commission, shall not invalidate the *Testing* of that *Rider.*

Notification of *Riders*

124. Any *Rider* including any *Rider* who has abandoned the *Race,* shall be aware that he may have been selected to undergo *Testing* after the *Race* and is responsible for ensuring personally whether he is required to appear for *Sample* collection.

To this end, the *Rider,* immediately after finishing or abandoning the *Race* shall locate and proceed to the place where the list of *Riders* who are required to appear for *Sample* collection, is displayed and consult the list.

Riders who participate in time trials shall consult the list after the last *Rider* finishes his ride.

125. The organizer and the *Anti-Doping Inspector* shall ensure that a list of the *Riders* who are required to appear for *Sample* collection shall be displayed at the finish line and at the entrance of the doping control station before the finish of the winner.

126. At track *Events,* one copy of the list shall be displayed at the entrance of the access tunnel when leaving the track center and the other copy shall be displayed at the entrance of the doping control station.

At trial and indoor *Events,* one copy of the list shall be displayed where the *Riders* leave the course or field after having finished their performance and the other copy shall be displayed at the entrance of the doping control station.

127. *Riders* shall be identified on the list by their name or their race number or their place in the ranking.

128. No *Rider* may take the absence of his name, race number or placing from the displayed list as excuse if he is identified in another manner or if it is established that he had learnt in another way that he was required to appear for *Sample* collection.

129. At all times a *Rider* may be called for *Testing* at a *Post-Competition Testing* session in the same way as for *Individual Testing.*

Comment: *In addition to displaying the list of Riders to be selected, additional forms of notification are sometimes used such as audio announcements via "Radio Tour" or at the finish venue. The absence of such additional forms of notification may never be interpreted as an indication that no Testing will take place and is no excuse for failing to submit to Sample taking.*

When a Rider does not appear for Sample taking, there is no obligation for the Anti-Doping Inspector, the organizer or anyone else to try to contact or notify the Rider.

130. An escort shall remain close to the *Rider* and observe him at all times, and accompany him to the doping control station. The absence of an escort cannot be pleaded as a defense.

Time-limit for attendance

131. Each *Rider* to be tested must present himself at the doping control station within 30 (thirty) minutes of finishing the *Race* or, where appropriate, within 30 (thirty) minutes of the end of an official ceremony in which he has taken part. For a *Rider* required to attend a press conference under a provision of the regulations, the deadline shall be extended to 50 (fifty) minutes.

132. A *Rider* who has abandoned the *Race* must attend within 30 (thirty) minutes of the finishing time of the last classified *Rider.*

133. A *Rider* who has to take part in another *Race* on the same day may, within the time-limit set as above, ask permission from the *Anti-Doping Inspector* to submit to *Sample* taking after the other *Race.* The inspector shall decide whether the test should take place immediately or following the other *Race.*

Report

134. For each *Post-Competition Testing* session, the *Anti-Doping Inspector* shall draw up a report in which he shall attest that *Testing* complies with these Anti-Doping Rules and the *Procedural Guidelines* or note the irregularities that he observed.

Within 48 (forty-eight) hours of the dispatch of the *Samples* to the laboratory this report must be sent to the Anti-Doping Commission.

Individual Testing

135. *Individual Testing* may be organized *In-Competition* and *Out-of-Competition,* at any time and any place and without notice.

136. The Anti-Doping Commission shall determine the place and time and the *Riders* to be tested or authorize the National Federation to do so.

137. *Individual Testing* may be carried out at any place where the privacy of the *Rider* is ensured and that is used solely as a doping control station for the duration of the *Sample* collection session.

Sample taking shall be carried out in the best possible manner under the circumstances given and as discreetly as possible.

Notification of *Riders*

138. *No Advance Notice Testing* shall be the notification method for *Individual Testing* wherever possible.

139. *Riders* shall be called for *Individual Testing* using a notification form.

140. The *Anti-Doping Inspector* shall notify the *Rider* in person. When the notification takes place *In-Competition*, the *Rider* may also be notified via his team manager or club representative.

141. The *Rider* or his team manager or club representative shall sign the original notification form as proof of receipt. If the *Rider* or his team manager or club representative refuses to sign that he has been notified or evades notification, the *Anti-Doping Inspector* shall note this on the form and inform the *Rider* of the consequences of failing to comply if possible.

142. During stage races and World Championships, the team manager or club representative must always be in a position to indicate where his *Riders* are in order that they may be contacted as quickly as possible.

Team managers or club representatives who give incorrect information, refuse to give information or obstruct *Testing* in any other way shall commit an anti-doping violation under article 15.5 (*Tampering* or *Attempting* to tamper).

143. The *Rider* notified of *No Advance Notice Testing* shall remain within sight of the *Anti-Doping Inspector* or a chaperone at all times from the moment of in-person notification until the completion of the *Sample* collection procedure. If it was not possible for the *Anti-Doping Inspector* to observe the *Rider* or to have the *Rider* chaperoned at all times, this shall be recorded by the *Anti-Doping Inspector*.

144. The time-limit within which the *Rider* is to appear for *Sample* taking shall be set by the *Anti-Doping Inspector*, taking account of the circumstances. *Sample* taking shall be carried out as soon as possible and, except in abnormal circumstances, not later than one hour of the *Rider* (or his team manager or club representative) receiving notification. The *Anti-Doping Inspector* may accept a request from a *Rider* to perform urgent preferential activities before proceeding to the doping control station. The request shall be rejected if it will not be possible for the *Rider* to be continuously observed.

Common rules for *Post-Competition Testing* and *Individual Testing*

Attendants

145. The *Rider* may be accompanied by a person of his choice and an interpreter during the *Sample* collection session except when the *Rider* is passing an urine *Sample*.

146. A *Minor Rider,* and the witnessing doctor or nurse are entitled to have a representative observe the doctor or nurse when the *Minor Rider* is passing a urine *Sample,* but without the representative directly observing the passing of the *Sample* unless requested to do so by the *Minor Rider.*

147. When applicable under the *Independent Observer Program, WADA* Independent Observers may attend the *Sample* taking session. *WADA* Independent Observers shall not directly observe the passing of the *Sample.*

148. The *Rider,* his attendant and the interpreter and any objects they bring with them may be searched.

Time limit for *Sample* taking

149. When a *Rider* does not report to the doping control station within the time-limit, the *Anti-Doping Inspector* shall use his judgment whether to attempt to contact the *Rider.*

150. If a *Rider* foresees that he might be prevented from reporting within the time-limit, he shall try, by all available means, to inform the *Anti-Doping Inspector.*

151. At a minimum, the *Anti-Doping Inspector* and the *Medical Inspector* shall wait 30 (thirty) minutes after the time-limit before departing.

152. If the *Rider* reports to the doping control station after the minimum waiting time and prior to the departure of the *Anti-Doping Inspector* and the *Medical Inspector,* they shall if at all possible proceed with collecting a *Sample* and shall document the details of the delay in the *Rider* reporting to the doping control station.

153. If only one of the *Anti-Doping Inspector* or *Medical Inspector* is still present, *Sample* collection performed by only one of them may take place if both the *Rider* and the *Anti-Doping Inspector* or *Medical Inspector* so agree.

154. The *Sample* taking may not be delayed, for example to await the arrival of the *Rider's* attendant or interpreter.

155. The *Rider* shall only leave the doping control station if authorized by the *Anti-Doping Inspector* and under continuous observation by the *Anti-Doping Inspector* or a chaperone. The *Anti-Doping Inspector* shall consider any reasonable request by the *Rider* to leave the doping control station, until the *Rider* is able to provide a *Sample.*

If the *Anti-Doping Inspector* gives approval for the *Rider* to leave the doping control station, the *Anti-Doping Inspector* shall agree with the *Rider* on:

a) The purpose of the *Rider* leaving the doping control station; and
b) The time of return (or return upon completion of an agreed activity).

The *Anti-Doping Inspector* shall document this information and the actual time of the *Rider's* departure and return.

156. The *Anti-Doping Inspector* and *Medical Inspector* shall continue the doping control session until the *Rider* delivers the *Samples* required under these Anti-Doping Rules.

157. Should the *Rider* leave the doping control station, before the *Sample* is taken, he shall be considered to have refused the test and shall incur the sanctions set out in article 15.3.

158. Should a *Rider* leave the doping control station after the *Samples* are taken but before all the formalities are completed, the *Testing* shall be deemed valid.

159. Should the *Anti-Doping Inspector* or the *Medical Inspector* discharge a *Rider* or terminate the *Testing* session before the *Rider* has been tested, the *Rider* concerned shall be considered as not to have been selected for *Sample* taking and shall not have committed an anti-doping violation for having left the doping control station.

160. The events covered by articles 149 to 159 shall be recorded.

Anomalies

161. Any behavior by the *Rider* and/or persons associated with the *Rider* or anomalies with potential to compromise the *Sample* collection shall be recorded.

162. If there are doubts as to the origin or authenticity of the *Sample,* the *Rider* shall be asked to provide an additional *Sample.* If the *Rider* refuses to provide an additional *Sample,* this shall be recorded by the *Anti-Doping Inspector.* A refusal to provide an additional *Sample* shall be considered as a refusal to submit to *Sample* collection under article 15.3.

Documentation

163. The *Anti-Doping Inspector* shall provide the *Rider* with the opportunity to document any concerns he may have about how the session was conducted.

164. The *Rider* and the *Anti-Doping Inspector* shall sign appropriate documentation to indicate their satisfaction that the documentation accurately reflects the details of the *Rider's Sample* collection session, including any concerns recorded by the *Rider.* The *Rider* representative shall sign on behalf of the *Rider* if the *Rider* is a *Minor.* Other persons present who had a formal role during the *Rider's Sample* collection session may sign the documentation as a witness of the proceedings.

The *Anti-Doping Inspector* or the *Medical Inspector* shall provide the *Rider* with a copy of the records of the *Sample* collection session that have been signed by the *Rider.*

165. By appending his signature on the *Testing* form, the *Rider* confirms that, subject to any concern recorded by the *Rider:*

1. the *Testing* was conducted in accordance with applicable standards and regulations;
2. any subsequent complaint is excluded;
3. he received a copy of the *Testing* form.

Reporting

166. The UCI will report all *Testing* conducted under these Anti-Doping Rules to *WADA*, including the name of the *Rider*, the date and place of the test and whether the test was *In-Competition* or *Out-of-Competition*.

National Federations that conduct *Testing* under these Anti-Doping Rules shall report all *Testing* to the UCI immediately after *Testing*.

WADA shall make the information accessible to the *Rider*, the *Rider's* National Federation, National Olympic Committee or National Paralympic Committee, *National Anti-Doping Organization* and the International Olympic Committee or International Paralympic Committee.

Property of *Samples*

167. The *Samples* collected under these Anti-Doping Rules shall become the property of the UCI upon collection.

***Samples* for screening**

168. *Riders* shall be also subject to *Sample* taking for screening purposes.

169. The UCI may use for screening purposes any relevant information collected, received or discovered, including blood *Samples* or other non-urine *Samples* collected pursuant to other regulations. The UCI is not obliged to justify the reason why the *Rider* was targeted and what information was used for screening or targeting.

***Sample* collection equipment**

170. *Sample* collection equipment systems shall be used that:

1. have a unique numbering system incorporated into all bottles, containers, tubes or any other item used to seal the *Rider's Sample;*
2. have a sealing system that is tamper evident;
3. ensure the identity of the *Rider* is not evident from the equipment itself;
4. ensure that all equipment is clean and sealed prior to use by the *Rider*.

***Sample* transport**

171. The *Anti-Doping Inspector* shall be responsible for:

- storing the *Samples* prior to transport;
- sending the *Samples* with accompanying documentation to the laboratory;
- sending the *Sample* collection session documentation for the laboratory and the Anti-Doping Commission in accordance with the *Procedural Guidelines*.

Costs of *Testing*

172. The costs of *In-Competition Testing* initiated and directed by the UCI shall be borne by the organizer of the *Event*.

173. The costs of *Out-of-Competition Testing* directed by the UCI shall be borne by the UCI. The costs of *Out-of-Competition Testing* directed by a National Federation so authorized at its request, shall be borne by that National Federation.

174. The National Federation of the *Rider* shall be responsible for the costs of the B *Sample* analysis.

175. Should a *Rider* be sanctioned following *Testing*, he shall bear the costs incurred for *Out-of-Competition Testing* and B *Sample* analysis.

Analysis of *Samples*

176. *Samples* shall be sent for analysis only to *WADA*-accredited laboratories or as otherwise approved by *WADA*. The choice of the *WADA*-accredited laboratory (or other method approved by *WADA*) used for the *Sample* analysis shall be determined exclusively by the Anti-Doping Commission.

177. When specific circumstances so justify, the Anti-Doping Commission may request that part of a *Sample* is analyzed in a second laboratory.

178. *Doping control Samples* shall be analyzed to detect *Prohibited Substances* and *Prohibited Methods* identified on the *Prohibited List* and other substances as may be directed by *WADA* pursuant to the Monitoring Program described in Article 4.5 of the *Code*.

179. Laboratories shall analyze doping control *Samples* and report results in conformity with the *WADA International Standard for Laboratory Analysis*.

180. Subject to articles 168 and 169, no *Sample* may be used for any purpose other than the detection of substances (or classes of substances) or methods on the *Prohibited List*, or as otherwise identified by *WADA* pursuant to its Monitoring Program, without the *Rider's* written consent.

181. The laboratory shall report any *Adverse Analytical Findings* to the Anti-Doping Commission and *WADA* or, if the *Adverse Analytical Finding* concerns World Championships, to the UCI official doctor and *WADA*.

VII
Chapter RESULTS MANAGEMENT

182. Results management under these Anti-Doping Rules, including results management from a test by a National Federation pursuant to articles 3 and 7, shall be conducted by the UCI's Anti-Doping Commission.

183. The Anti-Doping Commission shall refer results management concerning a *License-Holder* who usually does not participate in *International Events*, to the *License-Holder's* National Federation, who shall conduct results management in substantial conformity with this chapter.

Review

184. If after receiving a test analysis report, an inspector's statement, a referral by another *Anti-Doping Organization,* or any document or information regarding a possible anti-doping violation, the Anti-Doping Commission considers that no anti-doping violation or any other breach of these Anti-Doping Rules has taken place, then the case shall be taken no further.

This decision shall not be definitive and the Anti-Doping Commission may reopen the case on its own initiation.

WADA shall be informed of a decision not to proceed with a case. If *WADA* so requests, the Anti-Doping Commission shall reopen the case and request the National Federation to instigate disciplinary proceedings in accordance with article 224.

185. Before taking a decision, the Anti-Doping Commission may order additional investigations. National Federations shall be obliged to conduct such investigations as the Anti-Doping Commission may deem appropriate. All *License-Holders* are obliged to assist.

186. Upon receipt of an A *Sample Adverse Analytical Finding,* the Anti-Doping Commission shall conduct a review to determine whether: (a) an applicable Therapeutic Use Exemption has been granted, or (b) there is any apparent departure from these Anti-Doping Rules, the *Procedural Guidelines* or the *International Standards* for *Testing* or laboratory analysis that undermines the validity of the *Adverse Analytical Finding.*

187. If the initial review under article 186 does not reveal an applicable Therapeutic Use Exemption or departure from these Anti-Doping Rules, the *Procedural Guidelines,* the *International Standard* for *Testing* or the *International Standard* for laboratory analysis in force at the time of *Testing* or analysis that undermines the validity of the *Adverse Analytical Finding,* the Anti-Doping Commission shall promptly notify the *Rider's* National Federation of: (a) the *Adverse Analytical Finding;* (b) the anti-doping rule violated, or a description of the additional investigation that will be conducted as to whether there is an anti-doping rule violation; (c) the *Rider's* right to promptly request the analysis of the B *Sample* or, failing such request, that the B *Sample* analysis shall be deemed waived; (d) the right of the *Rider* and/or the *Rider's* representative to attend the B *Sample* opening and analysis if such analysis is requested; and (e) the *Rider's* right to request copies of the A and B *Sample* laboratory documentation package which includes information as required by the *International Standard* for laboratory analysis.

A copy of the notification may be sent to the *Rider* and/or the *Rider's* club or team.

A copy of the notification is sent to *WADA* and to the *Rider's National Anti-Doping Organization.*

188. The *Rider's* National Federation shall within 2 (two) working days send a copy of the notification from the Anti-Doping Commission to the *Rider* concerned. It shall also notify the UCI that this copy has been sent.

189. The notification of the *Rider's* National Federation under article 187 and the notification of the *Rider* under article 188 shall be confirmed by the dispatch of a registered letter with proof of delivery.

190. Any communication by the National Federation will be deemed valid if sent to the most recent address for the *Rider* as notified to the National Federation.

Analysis of B *Sample*

191. The *Rider* and/or his National Federation and the Anti-Doping Commission shall be entitled to demand the analysis of the B *Sample*.

192. The request for the analysis of the B *Sample* shall indicate whether the *Rider* wants not only the opening, but also the analysis of the B *Sample* to be attended by him or a representative.

193. The request for the analysis of the B *Sample* shall be made directly to the laboratory by the *Rider's* National Federation, either on its own initiative or at the request of the *Rider*. A copy of the request for the analysis must be sent to the UCI at the same time.

194. To be acceptable, the request for the analysis of the B *Sample* by the National Federation shall be sent to the laboratory no more than 5 (five) working days after receipt of the registered letter sent to the National Federation of the *Rider* informing it of the A *Sample Adverse Analytical Finding*.

195. The analysis of the B *Sample* shall be conducted by the laboratory that conducted the analysis of the A *Sample*.

However, if justified by the need to have the B *Sample* analyzed, the UCI Anti-Doping Commission may decide that the analysis of the B *Sample* shall be carried out by another laboratory which it shall designate.

196. The analysis of the B *Sample* may be carried out by 2 (two) laboratories in accordance with article 177. Should the analysis of the A *Sample* carried out in this fashion have shown that the *Adverse Analytical Finding* is verifiable in the second laboratory only, the analysis of the B *Sample* shall be valid if carried out in this laboratory.

197. The opening of the B *Sample* may be attended by the *Rider*, an expert designated by him or by his National Federation, a representative of the *Rider's* National Federation and a representative of the UCI.

198. The analysis of the B *Sample* may be attended by the *Rider* or one representative if such request was made when the B *Sample* analysis was requested. The laboratory may restrict the attendance in order to avoid any disturbance of the analysis.

199. The laboratory, in consultation with the parties involved, sets a date for the analysis of the B *Sample* in a period of 10 (ten) working days after reception of the request excepted the opposed agreement of the Anti-Doping Commission.

200. The B *Sample* analysis of a blood *Sample* shall take place no later than 3 (three) days after the analysis of the A *Sample*. The Anti-Doping Commission shall inform the *Rider* and/or his National Federation as soon as possible of any A *Sample Adverse Analytical Finding* and of the date set for the B *Sample* analysis by fax or by email. The terms and procedures set above shall not apply for notifying the *Rider*.

The B *Sample* analysis shall be valid, even if the *Rider* did not receive notification in time or was unable to attend or to be represented.

201. No party may claim their inability to attend for the analysis of the B *Sample* on the date set as a reason for invalidating the analysis of the B *Sample*.

202. The *Rider's* National Federation shall be responsible for the costs of the analysis of the B *Sample*.

The *Rider's* National Federation may submit the request for the analysis following payment by the *Rider* of a sum not exceeding CHF 700.

203. A *Rider* may accept the A *Sample* analytical results and waive the B *Sample* analysis. The UCI may nonetheless elect to proceed with the B *Sample* analysis.

204. If the B *Sample* proves negative, the entire test shall be considered negative and the *Rider*, his National Federation, his *National Anti-Doping Organization* and *WADA* shall be so informed.

205. If a *Prohibited Substance* or the *Use* of a *Prohibited Method* is identified, the findings shall be reported to the *Rider*, his National Federation, his *National Anti-Doping Organization* and to *WADA*.

A copy of the report may be sent to the *Rider's* team or club.

Follow-up investigations

206. The Anti-Doping Commission shall conduct any follow-up investigation as may be required by the *Prohibited List*. Upon completion of such follow-up investigation, the Anti-Doping Commission shall promptly notify the *Rider* regarding the results of the follow-up investigation and whether or not the Anti-Doping Commission asserts that an anti-doping rule was violated.

207. The costs of follow-up investigations are at the expense of the *Rider*. The *Rider* may be requested to advance costs. If the *Rider* refuses to do so, he is presumed to have accepted the analytical results and the case shall proceed accordingly.

Test results management at World Championships

208. During World Championships, the laboratory shall report any *Adverse Analytical Finding* to the UCI official doctor.

If it is not possible for the test results to reach the UCI official doctor before the end of the Championships, they shall be sent to the UCI Anti-Doping Commission.

209. Upon receipt of an A *Sample Adverse Analytical Finding* from a test conducted at the World Championships, the UCI official doctor shall conduct the review described in article 186 and, where applicable, notify the *Rider* or, should this be impossible, his team manager immediately.

210. The UCI official doctor shall without further formalities call for the analysis of the B *Sample*, at which he has the right to be present. He shall inform the *Rider* and the delegation from his National Federation of the place, date and time of the analysis. No postponement of the analysis may be granted.

211. If the B *Sample* analytical result confirms the A *Sample* analytical result, the UCI official doctor shall inform the *Rider*, the president of the commissaires panel, the Anti-Doping Commission and the *Rider's* National Federation.
The notification to the *Rider's* National Federation may be made to the delegation from that Federation attending the Championships.

Results management at stage races and six-days races

212. During a stage race or a six-day race, upon receipt of an A *Sample Adverse Analytical Finding* from a test conducted at that stage race or a six-days race and completion of the review described in article 186, the Anti-Doping Commission shall notify the *Rider* via the president of the commissaires panel.

The president of the commissaires panel shall hear the *Rider's* explanations.

213. The request for the analysis of the B *Sample* shall be submitted in writing to the *Anti-Doping Inspector* within 3 (three) hours of the notification specified in article 212.

The *Rider* shall be issued with a receipt stating the time that the request was submitted.

214. No postponement of the analysis of the B *Sample* may be granted in order to permit attendance by the persons noted in articles 145 and 146 beyond 4 (four) days from the date of the request for the analysis.

215. The *Anti-Doping Inspector* shall submit the B *Sample* analysis report to the president of the commissaires panel.

216. If the B *Sample* analytical result confirms the A *Sample* analytical result, the Anti-Doping Commission shall inform the president of the commissaires panel for the purposes of article 219.

VIII
Chapter PROVISIONAL MEASURES

217. 1. If after the review described in articles 184 to 206 the Anti-Doping Commission asserts that an anti-doping violation under article 15.1 or article 15.2 was committed, the Anti-Doping Commission may ban the *Rider* from participating in *Events* for such time that the violation, in the opinion of the Anti-Doping Commission, is likely to affect the *Rider's* results.

2. Before the ban goes into effect or on a timely basis thereafter, the *Rider* shall be given an opportunity to be heard in either written or oral form. The President of the Anti-Doping Commission may appoint a member of the Anti-Doping Commission, including himself, or an *Anti-Doping Inspector* to hear the *Rider*.

3. The decision shall be taken by the member of the Anti-Doping Commission who has heard the *Rider* or, if the *Rider* was heard by an *Anti-Doping Inspector*, by the President of the Anti-Doping Commission having received the account of the *Anti-Doping Inspector*.

218. If after the initial review described in article 186 and at the eve or during a particular *Event*, the Anti-Doping Commission makes an assertion that an anti-doping violation may have been committed under articles 15.1 or 15.2 and determines that the asserted anti-doping violation, that occurred prior to that *Event*, may affect the *Rider's* results at the *Event*, the Anti-Doping Commission may request that the *Rider* is banned from the *Event*.

The request shall be made to the president of the commissaires panel. The president of the commissaires panel shall summon the *Rider* to be heard and decide whether the *Rider* shall be banned from the *Event*.

219. If, during an *Event* and where applicable after the review described in article 186 the Anti-Doping Commission or, at World Championships, the official doctor asserts that an anti-doping violation has been committed during the same *Event*, the Anti-Doping Commission or the official doctor will inform the president of the commissaires panel for the *Event*. The president of the commissaires panel shall summon the *License-Holder* concerned to be heard. The president of the commissaires panel may *Disqualify* the *Rider* or ban the *License-Holder* from the *Event* subject to the due opinion of the President or another member of the Anti-Doping Commission.

If a *Rider* is *Disqualified* for an asserted violation under articles 15.1 or 15.2 that occurred during a team race, the *Rider's* team shall be relegated to the last place of the race. In stage races on the road and subject to the application of article 279 after the decision of the hearing body, the team will be given its actual time.

220. In case of a recorded warning or a missed test in a period of 45 (forty-five) days before the start of a Major Tour, the *Rider* is not allowed to participate in that Tour.

221. The provisional measures under articles 217, 218 and 219 may be combined.

Such provisional measures may also be imposed on *Rider's Support Personnel* against whom an anti-doping violation is asserted for any period prior to the decision of the hearing body.

222. The provisional measures stipulated above are intended to preserve fair competition. They shall not prejudice the decision whether an anti-doping violation has occurred and shall not give rise to any claim in the event that the *License-Holder* is acquitted.

223. Provisional measures regarding a *License-Holder* who has been referred to his National Federation according to article 183, shall be governed by the rules of the National Federation.
Under all circumstances such *License-Holder* shall be *Disqualified* from participation in an *International Event* prior to the decision of the hearing body.

IX Chapter RIGHT TO A FAIR HEARING

224. When, following the results management process described in chapter VII, the Anti-Doping Commission makes an assertion that these Anti-Doping Rules have been violated, it shall notify the *License-Holder's* National Federation and request it to instigate disciplinary proceedings. It shall also send a copy of the test analysis report and/or other documentation. A copy of the statement may be sent to the *License-Holder* and/or the *License-Holder's* club or team.

A copy of the statement is sent to *WADA* and to the *License-Holder's National Anti-Doping Organization.*

License-Holder called before his National Federation

225. The *License-Holder's* National Federation shall call the *License-Holder* before it to hear his grounds and explanations.

This summons must be sent within 2 (two) working days of the receipt of the statement under Article 224.

226. The summons shall be sent by registered letter. It shall indicate the nature of the case against the *License-Holder.* The summons must be accompanied by a copy of the test analysis reports and documents received by the Federation from the Anti-Doping Commission. If these enclosures are missing, the *License-Holder* must notify the National Federation without delay.

227. The summons must be sent at least 10 (ten) days before the hearing to which the *License-Holder* has been called. A copy of the summons shall be sent to the UCI at the same time.

The summons shall indicate the date, time and venue for the hearing.

228. A single postponement to the hearing may be granted of not more than 8 (eight) days, except where the party concerned establishes a case of force majeure.

229. The *License-Holder* may forgo the hearing in which event the case will be conducted in writing.

Rights of the defense

230. The *License-Holder* shall be heard and the case investigated by the competent hearing body of the *License-Holder's* National Federation in accordance with the regulations of the *License-Holder's* National Federation whilst taking account of the following articles.

231. The hearing body shall be fair and impartial.

232. At the request of one of the parties to the case or at their own request the following shall also be heard: the organiser's National Federation, the laboratory which carried out the analysis, the *Anti-Doping Inspector,* the *Medical Inspector,* witnesses and expert witnesses.

The interested party shall be responsible for calling these persons to the proceedings and for their costs. It shall at the same time notify the other parties and the competent body.

233. The UCI may give its opinion in each case and demand that a sanction be imposed, either in writing or at the hearing.

It may call for a copy of the documentation of the case in full, including the proceedings of the hearing and the documents submitted by the parties.

234. The parties must provide each other with all the statements and documents which they intend to submit at the earliest opportunity. They shall also send them to the UCI at the same time.

235. The *License-Holder* has the right to see the contents of the case files. Each party may obtain a copy at its own expense.

Furthermore the case files may be consulted during the hearing.

236. The hearing shall be public unless the *License-Holder* requests otherwise.

The president of the hearing body may also as of right prohibit public access to the room during all or part of the hearing in the interest of public order or when the protection of privacy or medical secrecy justifies it.

237. Each party shall have the right to be represented by a qualified lawyer or by a representative on presentation of authorization in writing. The parties may be aided by any other person of their choice.

238. Each party and any witnesses and expert witnesses called shall be heard subject to the hearing body's discretion to accept testimony by telephone or written submission. The *License-Holder* shall have the right to speak last.

239. In the event that a party who has been convened should fail to appear, the case will be heard in that party's absence. The decision shall be deemed to have been taken after due hearing of the parties.

240. If the hearing body determines that the *License-Holder* has insufficient knowledge of the language of the proceedings, the *License-Holder* has the right to an interpreter at the hearing. The hearing body will determine the identity and responsibility for the cost of the interpreter.

241. Each party is responsible for the costs of interpreters for its witnesses and experts.

Decision

242. The decision of the hearing body shall note the identities of the parties called or heard and shall contain a brief summary of the procedure.

It shall bear the names of the persons who took the decision and must be signed by them.

243. The decision shall be dated and reasoned.

It shall, where appropriate, indicate the *Prohibited Substances* or *Prohibited Methods* for which the *Rider* has been declared positive.

It shall indicate the sanctions imposed on the *License-Holder.*

Costs

244. Subject to article 245 and in the absence of a specifically justified decision, each party shall bear the costs which it incurs.

245. If the *License-Holder* is found guilty of an anti-doping violation, he shall bear:

1. The cost of the proceedings as determined by the hearing body.
2. The cost of the result management by the Anti-Doping Commission; the amount of this cost shall be CHF 1000, unless a higher amount is claimed by the UCI and determined by the hearing body.
3. The cost of the B *Sample* analysis, where applicable. The National Federation shall be jointly and severally liable for its payment to the UCI.

The *License-Holder* shall owe the costs under 2) and 3) also if they were not awarded in the decision.

246. Should the *License-Holder* be acquitted the party nominated in the decision shall be liable for the costs under article 245.2.

Notification of the decision

247. One full copy of the decision, signed at least by the president of the hearing body, shall be sent to the *License-Holder* and the UCI. These copies shall be sent by registered post with proof of receipt within 3 (three) working days of the decision. The UCI shall send the text of the decision to *WADA* and to the *License-Holder's National Anti-Doping Organization.*

Exclusion of an appeal at national level

248. The decision by the hearing body of a *License-Holder's* National Federation shall not be subject to an appeal before another body (appeals board, tribunal, etc.) at National Federation level.

If such an appeal is entered, it must be declared inadmissible. Any other decision is void as of right. However, the UCI may ask the Court of Arbitration for Sport (CAS) to pronounce nullity where appropriate upon supplementary application in an appeal procedure against the decision of the competent body. This application may be made at any time during the procedure before the CAS.

Duration of the proceedings

249. The National Federation shall keep the UCI fully informed as to the status of the case.

250. The proceedings before the hearing body of the *License-Holder's* National Federation must be completed within 1 (one) month from the time limit set for the dispatch of the summons.

The National Federation shall be penalized by the disciplinary commission, incurring a fine of CHF 5000 for each week's delay without prejudice to the obligation to complete proceedings as fast as possible.

251. If the completion of the hearing is delayed beyond three months, the UCI may elect to bring the case directly to a single arbitrator from the Court of Arbitration for Sport (CAS), acting as a first instance tribunal. The case shall be handled in accordance with the Court of Arbitration for Sport appeal procedure without reference to any time limit for appeal. The *License-Holder's* National Federation shall be summoned to participate in the proceedings and shall bear all costs resulting for all parties from bringing the proceedings from the National Federation to the CAS.

252. The *License-Holder* may forego a hearing by acknowledging the violation of these Anti-Doping Rules and accepting *Disqualification, Ineligibility* and costs consistent with these Anti-Doping Rules as proposed or accepted by the Anti-Doping Commission.

253. If any new fact is revealed of a nature which might alter the decision issued by the hearing body of the *License-Holder's* National Federation after the date of pronouncement, the interested party may request that the case be reopened before the National Federation, unless it is possible to raise the new issue in existing proceedings before the CAS.

The new evidence must predate the decision of the hearing body, and the party submitting it must establish that it could not have known about it prior to the hearing where the decision was issued.

The request to reopen the case must be made within one month of the party's becoming aware of the evidence in question or it shall be debarred. The burden of proof regarding this date shall lie with the party submitting the new evidence.

254. Articles 248, 250 and 251 shall not apply to the *License-Holder* that was referred to his National Federation according to article 183.

X
Chapter SANCTIONS AND CONSEQUENCES

255. These Anti-Doping Rules concerning sanctions and consequences shall be construed and implemented in compliance with human rights and general principles of law, among which proportionality and individual case management.

Automatic Disqualification of individual results

256. A violation of these Anti-Doping Rules in connection with an *In-Competition* test automatically leads to *Disqualification* of the individual result obtained in that *Competition.*

Disqualification of Results in *Event* during which an Anti-Doping Rule Violation occurs

257. Except as provided in articles 258 and 259, an anti-doping rule violation occurring during or in connection with an *Event* leads to *Disqualification* of the *Rider's* individual results obtained in that Event according to the following rules:

1. If the violation is a violation of
 a) article 15.5 (*Tampering* or *Attempting* to tamper), or
 b) article 15.6 (*Possession*), or
 c) article 15.7 (*Trafficking*), or
 d) article 15.8 (Administration, *Attempted* administration or any type of complicity),
 all of the *Rider's* individual results are disqualified.
2. If the violation involves
 a) the presence, *Use* or *Attempted Use* of a *Prohibited Substance* or a *Prohibited Method* (articles 15.1 and 15.2), other than a *Specified Substance;* or
 b) evading *Sample* collection or refusing to submit to *Sample* collection (article 15.3); or
 c) failing to submit to *Sample* collection (article 15.3), except when the *Rider* establishes that he bears *No Significant Fault or Negligence;*

all of the *Rider's* results are disqualified, except for the results obtained (i) in *Competitions* prior to the *Competition* in connection with which the violation occurred and for which the *Rider* was tested with a negative result, and (ii) in *Competitions* prior to the *Competition(s)* under point 1.

3. If the violation involves the presence, *Use* or *Attempted Use* of a *Specified Substance*, all of the *Rider's* results obtained in *Competitions* posterior to the *Competition* in connection with which the violation occurred are disqualified, except for those results which were not likely to have been affected by the violation.

4. If the violation is a failure to submit to *Sample* collection and if the *Rider* establishes that he bears *No Significant Fault or Negligence*, the *Rider's* results obtained in other *Competitions* shall not be disqualified.

258. If the anti-doping violation involves the presence, *Use* or *Attempted Use* of a *Prohibited Substance* or a *Prohibited Method* (article 15.1 and 15.2) and the *Rider* establishes that he bears *No Fault or Negligence*, his individual results in the other *Competitions* shall not be disqualified except to the extent that they were likely to have been affected by the *Rider's* anti-doping violation.

259. 1. If the *Event* is a stage race, an anti-doping violation committed in connection with any stage, entails *Disqualification* from the *Event*, except when (i) the anti-doping violation involves the presence, *Use* or *Attempted Use* of a *Prohibited Substance* or a *Prohibited Method*, (ii) the *Rider* establishes that he bears *No Fault or Negligence* and (iii) his results in no other stage were likely to have been influenced by the *Rider's* anti-doping violation.

2. If the anti-doping violation committed in a stage race involves the presence, *Use* or *Attempted Use* of a *Specified Substance* and only a warning and reprimand are imposed, *Disqualification* from the *Event* is optional.

If the *Rider* is not *Disqualified* from the *Event*, 1% (one percent) of the time recorded by the *Rider* during the stage on which he tested positive shall be added to the final time on the individual classification. The number of points scored during that same stage shall be deducted from the final classification. Any prize won in connection with the stage in which the anti-doping violation occurred shall be forfeited.

260. In those cases that are not considered under articles 257 to 259, the *Disqualification* of the *Rider's* individual results obtained on the *Event* is optional.

Imposition of *Ineligibility* for *Prohibited Substances* and *Prohibited Methods*

261. Except for the specified substances identified in article 262, the period of *Ineligibility* imposed for a violation of article 15.1 (presence of *Prohibited Substance* or its *Metabolites* or *Markers*), article 15.2 (*Use* or *Attempted Use* of *Prohibited Substance* or *Prohibited Method*) and article 15.6 (*Possession of Prohibited Substances* and *Methods*) shall be:

First violation: 2 (two) years' *Ineligibility*

Second violation: Lifetime *Ineligibility*

However, the *License-Holder* shall have the opportunity in each case, before a period of *Ineligibility* is imposed, to establish the basis for eliminating or reducing this sanction as provided in articles 264 and 265.

Specified Substances

262. Where a *Rider* can establish that the Use of a *Specified Substance* was not intended to enhance sport performance, the period of *Ineligibility* found in article 261 shall be replaced with the following:

First violation: At a minimum, a warning and reprimand and no period of *Ineligibility* from future *Events*, and at a maximum, 1 (one) year's *Ineligibility*.

Second violation: 2 (two) years' *Ineligibility*

Third violation: Lifetime *Ineligibility*

However, the *License-Holder* shall have the opportunity in each case, before a period of *Ineligibility* is imposed, to establish the basis for eliminating or reducing (in the case of a second or third violation) this sanction as provided in articles 264 and 265.

Ineligibility for other Anti-Doping Rule Violations

263. The period of *Ineligibility* for other violations of these Anti-Doping Rules shall be:

1. For violations of article 15.3 (evading *Sample* collection, refusing or failing to submit to *Sample* collection) or article 15.5 (*Tampering* with *Doping Control* or *Attempting*), the *Ineligibility* periods set forth in article 261 shall apply.

2. For violations of article 15.7 (*Trafficking*) or article 15.8 (administration of *Prohibited Substance* or *Prohibited Method*), the period of *Ineligibility* imposed shall be a minimum of 4 (four) years up to lifetime *Ineligibility*. An anti-doping rule violation involving a *Minor* shall be considered a particularly serious violation, and, if committed by *Rider Support Personnel* for violations other than specified substances referenced in article 262, shall result in lifetime *Ineligibility* for such *Rider Support Personnel*. In addition, violations of such articles which also violate non-sporting laws and regulations, may be reported to the competent administrative, professional or judicial authorities.

3. For violations of article 15.4, as defined in article 86, (Whereabouts Violations or Missed *Tests*), the period of *Ineligibility* shall be:

First violation:	3 (three) months to 1 (one) year *Ineligibility*.
Second and subsequent violations:	1 (one) year to 2 (two) years' *Ineligibility*.

Elimination or Reduction of Period of *Ineligibility*

264. If the *Rider* establishes in an individual case involving an anti-doping rule violation under article 15.1 (presence of *Prohibited Substance* or its *Metabolites* or *Markers*) or *Use* of a *Prohibited Substance* or *Prohibited Method* under article 15.2) or an anti-doping violation under article 15.6 (*Possession* of *Prohibited Substances* or *Methods*) that he bears *No Fault or Negligence* for the violation, the otherwise applicable period of *Ineligibility* shall be eliminated. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in a *Rider's Specimen* in violation of article 15.1 (presence of a *Prohibited Substance*), the *Rider* must also establish how the *Prohibited Substance* entered his system in order to have the period of *Ineligibility* eliminated. In the event this article is applied and the period of *Ineligibility* otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of *Ineligibility* for multiple violations under articles 261, 262 and 269-271.

265. This article 265 applies to anti-doping rule violations involving article 15.1 (presence of a *Prohibited Substance* or its *Metabolites* or *Markers*), *Use* of a *Prohibited Substance* or *Prohibited Method* under article 15.2, failing to submit to *Sample* collection under article 15.3, *Possession* of *Prohibited Substances* or *Methods* under article 15.6 or administration of a *Prohibited Substance* or *Prohibited Method* under article 15.8. If a *License-Holder* establishes in an individual case involving such violations that he bears *No Significant Fault or Negligence*, then the period of *Ineligibility* may be reduced, but the reduced period of *Ineligibility* may not be less than one-half of the minimum period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this section may be no less than 8 (eight) years. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in a *Rider's Specimen* in violation of article 15.1 (presence of *Prohibited Substance*), the *Rider* must also establish how the *Prohibited Substance* entered his system in order to have the period of *Ineligibility* reduced.

266. The Hearing Panel may also reduce the period of *Ineligibility* in an individual case where the *License-Holder* has provided substantial assistance which results in discovering or establishing an anti-doping rule violation by another *Person* involving *Possession* under article 15.6.2 (*Possession* by *Rider Support Personnel*), article 15.7 (*Trafficking*), or article 15.8 (administration to a *Rider*). The reduced period of *Ineligibility* may not, however, be less, in principle, than one-half of the minimum period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this Article may be no less than 8 (eight) years.

267. If the sanction imposed exceeds the maximum set under these Anti-Doping Rules, it shall automatically be reduced to this maximum, without prejudice to the right of appeal of the person sanctioned.

Declaration or admission of doping

268. A *License-Holder* who declares or admits to having committed an anti-doping violation shall be considered as having committed that violation on the day of the declaration or admission, unless the facts admitted or declared can be tied to a specific instance, in which case the sanctions in force at the time of the facts shall be applied.

Rules for Certain Potential Multiple Violations

269. For purposes of imposing sanctions under articles 261, 262 and 263, a second anti-doping rule violation may be considered for purposes of imposing sanctions only if it is established that the *License-Holder* committed the second anti-doping rule violation after he received notice, or after a reasonable attempt was made to give notice of the first anti-doping rule violation; if not, the violations shall be considered as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction.

270. Where a *Rider*, based on the same *Testing*, is found to have committed an anti-doping rule violation involving both a *Specified Substance* under article 262 and another *Prohibited Substance* or *Prohibited Method*, the *Rider* shall be considered to have committed a single anti-doping rule violation, but the sanction imposed shall be based on the *Prohibited Substance* or *Prohibited Method* that carries the most severe sanction.

271. Where a *Rider* is found to have committed 2 (two) separate anti-doping rule violations, one involving a *Specified Substance* governed by the sanctions set forth in article 262 (*Specified Substances*) and the other involving a *Prohibited Substance* or *Prohibited Method* governed by the sanctions in article 261 or a violation governed by the sanctions in article 263.1, the period of *Ineligibility* imposed for the second violation shall be at a minimum 2 (two) years' *Ineligibility* and at a maximum 3 (three) years' *Ineligibility*. Any *Rider* found to have committed a third anti-doping rule violation involving any combination of *Specified Substances* under article 262 and any other anti-doping rule violation under article 261 or 263.1 shall receive a sanction of lifetime *Ineligibility*.

272. If an anti-doping violation has been sanctioned without consideration having been given to a former condemnation for another violation, the case may be reopened at the request of the Anti-Doping Commission.

273. Should an anti-doping violation be discovered that has occurred prior to another violation that has already been sanctioned, the former shall be sanctioned as a second or subsequent violation.

Disqualification of Results in *Competitions* Subsequent to anti-doping violation

274. In addition to the automatic *Disqualification* of the results in the *Competition* pursuant to article 256, all other competitive results obtained from the date a positive *Sample* was collected (whether *In-Competition* or *Out-of-Competition*), or other doping violation occurred, through the commencement of any *Ineligibility* period, shall, unless fairness requires otherwise, be *Disqualified*.

Comment: *it may be considered as unfair to disqualify the results which were not likely to have been affected by the Rider's anti-doping rule violation.*

Commencement of *Ineligibility* Period

275. The period of *Ineligibility* shall start on the date of the hearing decision providing for *Ineligibility* or, if the hearing is waived, on the date *Ineligibility* is accepted or otherwise imposed. Any period during which provisional measures pursuant to articles 217 through 223 were imposed or voluntarily accepted and any period for which subsequent *Competition* results have been *Disqualified* under article 274 shall be credited against the total period of *Ineligibility* to be served. Where required by fairness, such as delays in the hearing process or other aspects of Doping Control not attributable to the *License-Holder*, the hearing body imposing the sanction may start the period of *Ineligibility* at an earlier date commencing as early as the date of the anti-doping violation.

Reinstatement *Testing*

276. As a condition to regaining eligibility at the end of a specified period of *Ineligibility*, a *Rider* must, during any period of provisional measures or *Ineligibility*, make himself available for *Out-of-Competition Testing* by the UCI and any other *Anti-Doping Organization* having *Testing* jurisdiction under the *Code*, and must provide current and accurate whereabouts information as provided in article 76.

277. If a *Rider* subject to a period of *Ineligibility* retires from sport and is removed from UCI's *Registered Testing Pool* and later seeks reinstatement, the *Rider* shall not be eligible for reinstatement until he has notified the UCI and his National Federation and has been subject to *Out-of-Competition Testing* for a period of time equal to the longer of the period set forth in article 77 or the period of *Ineligibility* remaining as of the date the *Rider* had retired.

Consequences to teams

278. Except as provided in article 279, if a *Rider* is found to have committed an anti-doping violation in connection with a team *Competition* in which he participated as a member of a team, the team shall be *disqualified* from that *Competition*.

If such *Rider* is *disqualified* from other *Competitions* of the same *Event* under articles 257.2a or 3 or article 258, any team, whether composed differently or not, of which such *Rider* was a member, shall be *disqualified* from the same Competitions as the *Rider*.

279. In the case of a team stage during a stage race, the team shall be relegated to the last place on the stage with its real time and with a 10 (ten) minutes penalty on the general classification of teams. If more than one *Rider* on the team is found to have committed an anti-doping violation during the same team stage, the team is *disqualified* from the stage race.

XI
Chapter APPEAL TO THE CAS

280. The following decisions may be appealed to the Court of Arbitration for Sport:
a) the decisions of the hearing body of the National Federation under article 242;
b) a decision that a *Rider* shall be banned from participating in *Events* under article 217 if the ban is for more than 1 (one) month;
c) the decisions concerning Therapeutic Use Exemptions as specified under articles 67, 68, 70 and 72.
d) the final decision at the level of the National Federation regarding a *License-Holder* that was referred to his National Federation according to article 183.

No other form of appeal shall be permitted.

281. In cases under article 280 a), the following parties shall have the right to appeal to the CAS:
a) the *License-Holder* who is the subject of the decision being appealed;
b) the other party to the case in which the decision was rendered;
c) the UCI;
d) the International Olympic Committee or International Paralympic Committee, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games;
e) *WADA*.

282. The appeal of the UCI shall be made against the *License-Holder* and against the National Federation that made the contested decision and/or the body that acted on his behalf. The National Federation or body concerned shall be liable for costs if the hearing body which made the decision against which the appeal has been made has applied the regulations incorrectly.

283. An appeal by the *License-Holder* shall be made against his National Federation.

The National Federation must immediately send the UCI a copy of the statement of appeal and of any submissions or briefs made before the CAS.

The UCI shall have the right to participate in the proceedings before the CAS and demand that a sanction is imposed or increased.

284. The statement of appeal by the *License-Holder* or the other party to the case must be submitted to the CAS within 1 (one) month of his receiving the full decision as specified in article 247. Failure to respect this time limit shall result in the appeal being disbarred.

285. The statement of appeal by the UCI, the International Olympic Committee, the International Paralympic Committee or *WADA* must be submitted to the CAS within 1 (one) month of receipt of the full case file from the hearing body of the National Federation. Failure to respect this time limit shall result in the appeal being disbarred. Should the appellant not request the file within 15 (fifteen) days of receiving the full decision as specified in article 247, the time limit for appeals shall be 1 (one) month from the reception of that decision.

286. If the respondent makes a counter-appeal, the appellant has the right to respond within 1 (one) month of receiving the respondent's reply, except where extended by the CAS. If the respondent is the *License-Holder*, he shall have the right to submit an additional statement within 15 (fifteen) days of receiving the appellant's reply, unless the time limit is extended by the CAS.

287. In cases under article 280 b), the *Rider* only shall have the right to appeal to the CAS.

The appeal shall be made against the UCI.

The time to file the appeal to the CAS shall be 8 (eight) days from receipt of the decision by the *Rider* or his National Federation or his club or team.

288. An appeal to the CAS shall not suspend the execution of the contested decision, without prejudice to the right to apply to the CAS for it to be suspended.

289. The CAS shall have full power to review the facts and the law. The CAS may increase the sanctions that were imposed on the appellant in the contested decision.

290. The CAS shall decide the dispute according to these Anti-Doping Rules and the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law.

291. The decision of the CAS shall be final and binding on the parties to the case and to all *License-Holders* and National Federations. It shall not be subject to appeal.

XII Chapter CONFIDENTIALITY AND PUBLIC DISCLOSURE

Duty of confidentiality

292. Persons carrying out a task in *Doping Control* are required to observe strict confidentiality regarding any information concerning individual cases which is not required to be reported under these Anti-Doping Rules.

Such breaches of confidentiality shall be penalized by a fine of between CHF 1000 and CHF 10 000 as decided by the UCI Disciplinary Commission, which may also suspend the person in question from specified tasks for such time as it shall determine.

Public disclosure

293. Public disclosure shall be made by the Anti-Doping Commission or the National Federation as described in article 295.

294. *License-Holders* who are asserted to have committed a violation of these Anti-Doping Rules shall in principle not be publicly identified until it has been determined in a decision in accordance with articles 230 to 243 that an anti-doping violation has occurred.

However, the Anti-Doping Commission and the National Federation of the *License-Holder* who is asserted to have committed a violation of these Anti-Doping Rules may make public statements and identifications they deem appropriate under the circumstances, but not earlier than the moment of sending the notification referred to in article 224.

295. Once a violation of these Anti-Doping Rules has been established in a decision referred to in article 243, it shall be publicly reported as follows:

- if the UCI decides to appeal to the CAS, the UCI will report the violation, the decision and its decision to appeal no later than the expiration of the time limit for the appeal;
- if the UCI decides not to appeal to the CAS, it will report the violation and the decision no later than 10 (ten) days after the expiration of the time limit for the appeal.
- if the *License-Holder* or *WADA* appeals to the CAS, the UCI will report the violation, the decision and the appeal within 10 (ten) days after the appeal was notified to the UCI.

Publication

296. The definitive sanctions and the name of the person penalized shall be published in the UCI Official News Bulletin and/or in the official bulletin of the National Federation of the person penalized.

Register

297. The Anti-Doping Commission shall maintain a register of the penalties applied. This shall list the name of the *License-Holder*, his National Federation, his category (elite or other), the name and date of the *Event*, the penalties imposed, the date of the decision regarding the penalties and the body which imposed them.

XIII Chapter FINAL PROVISIONS

Third *Sample*

298. The UCI shall have the right to demand that a third *Sample* be taken at a *Sample* taking session. The Anti-Doping Commission shall issue instructions to his end to the *Anti-Doping Inspector.* The *Sample* taking procedures shall be applied mutatis mutandis. The taking of a third *Sample* shall be recorded.

Where appropriate, the further analysis of such *Samples* shall give rise to action for an anti-doping violation and sanctions.

Violations described under articles 15.3 and 15.5 shall apply regarding the third *Sample.*

Medication

299. In *Events* designated by the Anti-Doping Commission, team or club doctors will be obliged to list all medicines taken by each *Rider* and their dosages and any medical treatment that they may have undergone during the preceding 72 (seventy-two) hours. Failure to do so shall make the team ineligible to start the race.

National Federations

300. When a National Federation receives from third parties information concerning a possible anti-doping violation, it shall immediately inform the Anti-Doping Commission of the UCI.

301. All National Federations shall include in their regulations the rules necessary to effectively implement these Anti-Doping Rules.

302. For the purpose of these Anti-Doping Rules, the organizer's National Federation shall take on the role of the *License-Holder's* National Federation as regards *License-Holders* who have obtained their license directly from the UCI.

303. Without prejudice to article 13 of the Constitution, National Federations shall be obligated to reimburse the UCI for all costs related to a doping case in which the National Federation was not cooperative or did not comply with these Anti-Doping Rules.

Non-*License-Holders*

304. 1. If a breach of these Anti-Doping Rules is committed by a non-*License-Holder*, the Anti-Doping Commission and/or any National Federation involved shall take whatever steps are necessary to take proceedings before the competent bodies against the person in question.

2. Right to a fair hearing having granted, the Anti-Doping Commission may ban this person from attending a cycling *Event*. It may also ban any National Federation, club or trade team from making use of services offered by this person, with breaches of such a ban being subject to a fine of between CHF 1000 and CHF 10000 as determined by the Disciplinary Commission. These measures and sanctions may be taken independently of the procedure noted under paragraph 1.

Independent Observers

305. Organizers shall provide access to Independent Observers as directed by the UCI.

Recognition of decisions by other organizations

306. 1. Subject to the right to appeal provided in chapter XI, the *Testing*, therapeutic use exemptions and hearing results or other final adjudications of any *Signatory* to the *Code* which are consistent with the *Code* and are within the *Signatory's* authority, shall be recognized and respected by the UCI and the National Federations.

2. The UCI may recognize the same actions of other bodies which have not accepted the *Code* if the applicable rules of those bodies are otherwise consistent with the *Code*. The National Federations shall respect such actions when recognized by the UCI.

3. When agreed or otherwise decided between the UCI and the competent authorities, the UCI and the National Federations may administrate results management, hearings and appeals for the application of anti-doping legislation.

Statute of limitations

307. No action may be commenced under these Anti-Doping Rules against a *License-Holder* for a violation of an anti-doping rule contained in these Anti-Doping Rules unless such action is commenced within 8 (eight) years from the date the violation occurred.

Any request for investigation or for disciplinary action and any act of investigation or disciplinary action in relation with the violation shall be considered as commencement of the action for the purpose of this article.

Interpretation of Anti-Doping Rules

308. 1. The headings used for the various parts and articles of these Anti-Doping Rules are for convenience only and shall not be deemed part of the substance of these Anti-Doping Rules or to affect in any way the language of the provisions to which they refer.

2. The Introduction and the Appendix 1 "Definitions" shall be considered integral parts of these Anti-Doping Rules.

3. Notice to a *License-Holder* may be accomplished by delivery of the notice to his National Federation or as provided by these Anti-Doping Rules. The National Federation shall be responsible for making immediate contact with the *License-Holder.*

4. These Anti-Doping Rules shall not apply retrospectively to matters pending before the date these Anti-Doping Rules came into effect.

Entry into force

309. This version of the Anti-Doping Rules of the UCI shall come into force on 13 August 2004, except:

1) Until 31 December 2004, the therapeutic use exemption rules of the Anti-Doping Examination rules in force on 12 August 2003, continue to be in force and the exemption remain valid under these Anti-Doping Rules.

2) Article 15.4 shall come into force on 1 January 2005.

3) Until the introduction of the Procedural Guidelines of the Anti-Doping Commission, *Doping Control* shall be deemed in compliance with these Anti-Doping Rules when in compliance with the Anti-Doping Examination Regulations in force on 12 August 2004.

4) Until 31 December 2004, results management and disciplinary proceedings (hearings and appeals), shall be deemed in compliance with these Anti-Doping Rules when in compliance with the Anti-Doping Examination Regulations in force on 12 August 2004.

5) The Anti-Doping Examination Regulations in force on 12 August 2004 remain in force until 31 December 2004 for *National Events.*

6) Any period of suspension imposed under the Anti-Doping Examination Regulations in force until 12 August 2004 ends on 12 August 2004 if at that moment it exceeds the maximum set under these Anti-Doping Rules, and is reduced to this maximum otherwise.

310. Amendments to these Anti-Doping Rules shall come into force on the date of their publication in the Official News Bulletin unless this publication specifies a different date for entry into force.

(Appendix 1)

DEFINITIONS

Adverse Analytical Finding:
A report from a laboratory or other approved *Testing* entity that identifies in a *Specimen* the presence of a *Prohibited Substance* or its *Metabolites* or *Markers* (including elevated quantities of endogenous substances) or evidence of the *Use* of a *Prohibited Method.*

Anti-Doping Inspector:
Doping control officer with overall responsibility for the on site management of the *Testing as* described in these Anti-Doping Rules and in the *Procedural Guidelines.*

Anti-Doping Organization:
A Signatory of the Code that is responsible for adopting rules for initiating, implementing or enforcing any part of the *Doping Control* process. This includes, for example, the International Olympic Committee, the International Paralympic Committee, other *Major Event Organizations* that conduct *Testing* at their *Events, WADA,* International Federations, and *National Anti-Doping Organizations.*

Attempt:
Purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation. Provided, however, there shall be no anti-doping rule violation based solely on an *Attempt* to commit a violation if the *Person* renunciates the attempt prior to it being discovered by a third party not involved in the *Attempt.*

Code:
The World Anti-Doping *Code.* The *Code* is available on *WADA's* website at www.wada-ama.org or via UCI.

Competition:
A single *Race* organized separately (for example: a one day road race, each of the time trial and road race at the road World Championships) or a series of *Races* forming an organizational unit and producing a final winner and/or general classification (for example: a road race, a track sprint race tournament, a cyclo-ball tournament) (Note: a World Cup series is not an *Event* or *Competition*).

Disqualification:
See article 12.1.022 of the UCI Cycling Regulations.

Doping Control:
The process including test distribution planning, *Sample* collection and handling, laboratory analysis, results management, hearings and appeals.

Event:
A single *Competition* organized separately (for example: a one day road race, a stage race) or a series of *Competitions* conducted together as a single organization (for example: road World Championships, track World Championships, a track World Cup event); a reference to *Event* includes reference to *Competition* and *Race*, unless the context indicates otherwise.

In-Competition:
In-Competition refers to the period that starts one day before or, in the case of a major tour, three days before the day of the start of an *Event* and finishing at midnight of the day on which the *Event* finishes.

However, regarding the *Presence* or *Use* of a prohibited stimulant as defined in the *Prohibited List*, *In-Competition* refers to the period starting 8 (eight) hours before the start of a *Race* in which the *Rider* is competing or for which he has been confirmed as a starter and finishing at the end of the *Post-Competition Testing* session that is organized following the *Race*.

Independent Observers Program:
A team of observers, under the supervision of *WADA*, who observe the *Doping Control* process at certain *Events* and report on observations. If *WADA* is testing *In-Competition* at an *Event*, the observers shall be supervised by an independent organization.

Individual Testing:
Testing on *Riders* that is organized separately, as opposed to *Post-Competition Testing* sessions following a *Race* or *Competition*. *Individual Testing* takes place *In-Competition* (on *Riders* who participate in the *Competition* or were confirmed as starters, at any time other than during the *Post-Competition Testing* session) or *Out-of-Competition*.

Ineligibility:
Under these Anti-Doping Rules, *Ineligibility* is defined as a suspension as described in article 12.1.033 of the UCI Cycling Regulations.

Ineligibility also means that the *License-Holder* is barred, for the period of *Ineligibility*, from participating in any *Competition* or other activity organized or authorized by any *Signatory* or *Signatory's* member organization, and from any funding as provided in article 10.9 of the *Code*.

International Event / Competition / Race:
An *Event*, *Competition*, *Race* of the international calendar of the UCI.

International Standards:
Standards adopted by *WADA* in support of the *Code*. Compliance with the *International Standards* (as opposed to other alternative standards, practice or procedure) shall be sufficient to conclude that the procedures addressed by the *International Standards* were performed properly.

License-Holder:

1) A *Person* who is holder of a license or who has applied for a license under the UCI Cycling Regulations;
2) Any *Person* who, without being a holder of a license, participates in a cycling *Event* in any capacity whatsoever, including, without limitation, as a coach, trainer, manager, team director, team staff, agent, official, medical or para-medical personnel;
3) Any *Person* who, without being a holder of a license, participates, in the framework of a club, trade team, national federation or any other structure participating in races, in the preparation or support of *Riders* for sports competitions.

Major Event Organizations:

This term refers to the continental associations of *National Olympic Committees* and other international multi-sport organizations that function as the ruling body for any continental, regional or other international event.

Marker:

A compound, group of compounds or biological parameters that indicates the *Use* of a *Prohibited Substance* or *Prohibited Method.*

Medical Inspector:

Doping Control officer responsible for the Sample taking as described in these Anti-Doping Rules and in the *Procedural Guidelines.*

Metabolite:

Any substance produced by a biotransformation process.

Minor:

A natural Person who has not reached the age of majority as established by the applicable laws of his country of residence.

National Anti-Doping Organization:

The entity(ies) designated by each country as possessing the primary authority and responsibility to adopt and implement anti-doping rules, direct the collection of Samples, the management of test results, and the conduct of hearings, all at the national level. If this designation has not been made by the competent public authority(ies), the entity shall be the country's *National Olympic Committee* or its designee.

National Event / Competition / Race:

An *Event, Competition, Race* of the national calendar of each of the member federations of the UCI.

National Olympic Committee:

The organization recognized by the International Olympic Committee. The term *National Olympic Committee* shall also include the National Sport Confederation in those countries where the National Sport Confederation assumes typical *National Olympic Committee* responsibilities in the anti-doping area.

No Advance Notice:
A *Doping Control* which takes place with no advance warning to the *Rider* and where the *Rider* is continuously chaperoned from the moment of notification through *Sample* provision.

No Fault or Negligence:
The *Rider's* establishing that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had *Used* or been administered the *Prohibited Substance* or *Prohibited Method.*

No Significant Fault or Negligence:
The *Rider's* establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for *No Fault or Negligence,* was not significant in relationship to the anti-doping rule violation.

Out-of-Competition:
Any *Doping Control* or fact which is not *In-Competition.*

Person:
A natural *Person* or an organization or other entity.

Possession:
The actual, physical possession, or the constructive possession (which shall be found only if the *Person* has exclusive control over the *Prohibited Substance/Method* or the premises in which a *Prohibited Substance/Method* exists); provided, however, that if the *Person* does not have exclusive control over the *Prohibited Substance/Method* or the premises in which a *Prohibited Substance/Method* exists, constructive possession shall only be found if the *Person* knew about the presence of the *Prohibited Substance/Method* and intended to exercise control over it. Provided, however, there shall be no anti-doping rule violation based solely on possession if, prior to receiving notification of any kind that the *Person* has committed an anti-doping rule violation, the *Person* has taken concrete action demonstrating that the *Person* no longer intends to have *Possession* and has renounced the *Person's* previous *Possession.*

Post-Competition Testing:
In-Competition Testing session that is organized following a *Race* or *Competition* for the purpose of testing *Riders* that participated in the *Race* or *Competition.*

Procedural Guidelines:
Documents established by the Anti-Doping Commission and regulating technical and operational parts of *Testing* pursuant to article 96; reference to these Anti-Doping Rules shall include reference to the *Procedural Guidelines* where applicable.

Prohibited List:
The List published by *WADA* and identifying the *Prohibited Substances* or *Prohibited Methods.*

Prohibited Method:
Any method so described on the *Prohibited List.*

Prohibited Substance:
Any substance so described on the *Prohibited List.*

Publicly Disclose or Publicly Report:
To disseminate or distribute information to the general public or persons beyond those persons entitled to earlier notification in accordance with these Anti-Doping Rules.

Race:
A cycling contest that produces a winner or a ranking according to the rules (for example: a one day road race, a stage or a half stage in a stage race, the 16th final of a track sprint race tournament, a cyclo-ball game).

Registered Testing Pool:
The pool of top level *Riders* established separately by the UCI and each National Anti-Doping Organization who are subject to both *In-Competition* and *Out-of-Competition Testing* as part of the UCI's or Organization's test distribution plan.

Rider:
A *Person* who participates as a cyclist in an *Event,* whether he is authorized to or not.

Rider's Support Personnel:
A *License-Holder* who is not a *Rider.*

Sample/Specimen:
Any biological material collected for the purposes of *Doping Control.*

Signatories:
Those entities signing the *Code* and agreeing to comply with the *Code,* including the International Olympic Committee, the UCI, International Paralympic Committee, *National Olympic Committees,* National Paralympic Committees, *Major Event Organizations, National Anti-Doping Organizations,* and *WADA.*

Specified Substance:
Prohibited Substance so identified on the *Prohibited List* pursuant to article 10.3 of the *Code: "The Prohibited List may identify specified substances which are particularly susceptible to unintentional anti-doping rule violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents".*

Tampering:
Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly to alter results or prevent normal procedures from occurring.

Target Testing:
Selection of *Riders* for *Testing* where specific *Riders* or groups of *Riders* are selected on a non-random basis for *Testing* at a specified time.

Testing:
The parts of the *Doping Control* process involving test distribution planning, *Sample* collection, *Sample* handling, and *Sample* transport to the laboratory.

Trafficking:
To sell, give, administer, transport, send, deliver or distribute a *Prohibited Substance* or *Prohibited Method* to any *Person* either directly or through one or more third parties, but excluding the sale or distribution (by medical personnel or by *Persons* other than a *Rider's Support Personnel*) of a *Prohibited Substance* for genuine and legal therapeutic purposes.

Use:
The application, ingestion, injection or consumption by any means whatsoever of any *Prohibited Substance or Prohibited Method.*

WADA:
The World Anti-Doping Agency.

(Appendix 2)

SELECTION OF RIDERS TO BE TESTED

(Article 121 of the Anti-Doping Rules)
(In the absence of specific instructions from the antidoping commission)

A. World Championships, Continental Championships, regional games

See appendix 3

B. Other events

I. ProTour (one day events)

- **General rule**
 1. ProTour leader if he is present
 2. The winner
 3. Two riders selected at random by the inspector.

II. ProTour (stage races)

- **General rule**
 1. ProTour leader after the first stage if he is present
 2. ProTour leader after the last stage if he is present
 3. The winner of the stage
 4. The leader of the general classification after the stage
 3. Two riders selected at random by the Inspector.

III. One day events (all disciplines)

- **General rule**
 1. The winner
 2. Two riders selected at random by the inspector.

- **World cup**
 1. The winner of the race
 2. The leader on the general classification of the world cup after the race
 3. Two riders selected at random by the Inspector.

- **Half-stages**
 1. The winner of the first half-stage
 2. The winner of the second half-stage
 3. One rider selected at random by the inspector for each half-stage.

- **Team events**
 1. One rider selected at random by the inspector from the winning team
 2. Two riders selected at random by the inspector from all other teams.

IV. Stage races (all disciplines, including prologues)

- **General rule**
 1. The stage winner
 2. The leader on general classification after the stage
 3. Two riders selected at random by the inspector.

- **Team time trial stage**
 1. One rider selected at random by the inspector from the winning team
 2. The leader on general classification after the stage
 3. Two riders selected at random by the inspector from all other teams.

- **Half-stages**
 1. The winner of the first half-stage
 2. The winner of the second half-stage
 3. The leader on general classification after the second half-stage.

V. Specific time trial events

- **Individual**
 1. The first three placed riders
 2. Two riders selected at random by the inspector.

- **For teams**
 1. One rider selected at random by the inspector from the winning team
 2. One rider selected at random by the inspector from the second-placed team
 3. One rider selected at random by the Inspector from each of four different randomly selected teams.

VI. Track events (all disciplines)

- **Individual**
 1. The winner
 2. One rider selected at random by the Inspector.

- **For teams**
 1. One rider selected at random by the Inspector from the winning team
 2. One rider selected at random by the Inspector from all other teams.

VII. Six-day races

1. One rider selected at random by the inspector from the winning team
2. Three riders selected at random by the inspector from three other different teams.

(text modified on 1.01.06).

(Appendix 3)

SELECTION OF RIDERS TO BE TESTED
(Article 121 of the Anti-Doping Rules)
(In the absence of specific instructions from the Anti-Doping Commission)

A. WORLD JUNIORS CHAMPIONSHIPS, CONTINENTAL CHAMPIONSHIPS, REGIONAL GAMES

1. World juniors track championships

Men

• Kilometre time trial: first + 1 selected at random	2
• Keirin: first + 1 selected at random	2
• Sprint:	
- qualification: best time + 1 selected at random	
- final: first + 1 selected at random	4
• Team Sprint:	
- qualification: best time + 1 selected at random among the riders of the other teams	
- final: 1 rider from the first team + 1 rider selected at random among the riders of the other teams	4
• Individual pursuit:	
- qualification: best time + 1 selected at random	
- final: first + 1 selected at random	4
• Team pursuit:	
- qualification: 1 rider from the team with the best time + 1 rider selected at random among the riders of the other teams	
- final: 1 rider from the first team + 1 selected at random among the riders of the other teams	4
• Scratch: first + 1 selected at random	2
• Points race: first + 1 selected at random	2
• Madison: 1 rider from the first team + 1 rider selected at random among the riders of the other teams	2
Total men	26

Women

• Sprint:	
- qualification: best time + 1 selected at random	
- final: first + 1 selected at random	4
• Keirin: first + 1 selected at random	2
• Individual pursuit:	
- qualification: best time + 1 selected at random	
- final: first + 1 selected at random	4
• Points race: first + 1 selected at random	2
• Scratch: first + 1 selected at random	2
• 500 m standing start time trial: first + 1 selected at random	2
Total women	16

Total: 42 tests

2. World cyclo-cross championships

Juniors

- first 4 + 2 selected at random	6
Under 23	
- first 4 + 2 selected at random	6
Elite	
- first 4 + 2 selected at random	6
Women	
- first 4 + 2 selected at random	6
Total	24

3. World road championships

Juniors Women

• Individual - first 4 + 2 selected at random	6
• Individual time trial - first 4 + 2 selected at random	6
Total	12

Juniors Men

• Individual - 4 first + 2 selected at random	6
• Individual time trial - 4 first + 2 selected at random	6
Total	12

Under 23

• Individual - 4 first + 2 selected at random	6
• Individual time trial - 4 first + 2 selected at random	6
Total	12

Elite Women

• Individual - first 4 + 2 selected at random	6
• Individual time trial - first 4 + 2 selected at random	6
Total	12

Elite Men

• Individual - 4 first + 2 selected at random	6
• Individual time trial - 4 first + 2 selected at random	6
Total	12

Total: 60 tests

4. World track championships

Men

• Kilometre time trial: first + 1 selected at random	2
• Keirin: first + 1 selected at random	2
• Sprint:	
- qualification: best time + 1 selected at random	
- final: first + 1 selected at random	4
• Team Sprint:	
- qualification: best time + 1 selected at random among the riders of the other teams	
- final: 1 rider from the first team + 1 rider selected at random among the riders of the other teams	4
• Individual pursuit:	
- qualification: best time + 1 selected at random	
- final: first + 1 selected at random	4
• Team pursuit:	
- qualification: 1 rider from the team with the best time + 1 rider selected at random among the riders of the other teams	
- final: 1 rider from the first team + 1 selected at random among the riders of the other teams	4
• Scratch: first + 1 selected at random	2
• Points race: first + 1 selected at random	2
• Madison: 1 rider from the first team + 1 rider selected at random among the riders of the other teams	2
Total men	26

Women

• Sprint:	
- qualification: best time + 1 selected at random	
- final: first + 1 selected at random	4
• Keirin: first + 1 selected at random	2
• Individual pursuit:	
- qualification: best time + 1 selected at random	
- final: first + 1 selected at random	4
• Points race: first + 1 selected at random	2
• Scratch: first + 1 selected at random	2
• 500 m standing start time trial: first + 1 selected at random	2
Total women	16

Total: 42 tests

5. World mountain bike championships
- first 2 riders in the general classification for each category
- 1 selected at random from each category

6. World indoor cycling championships
- Artistic cycling: the champions in each discipline
- Cycle-ball: in each group A/B/C – 1 player selected at random from the 2 teams contesting the final.

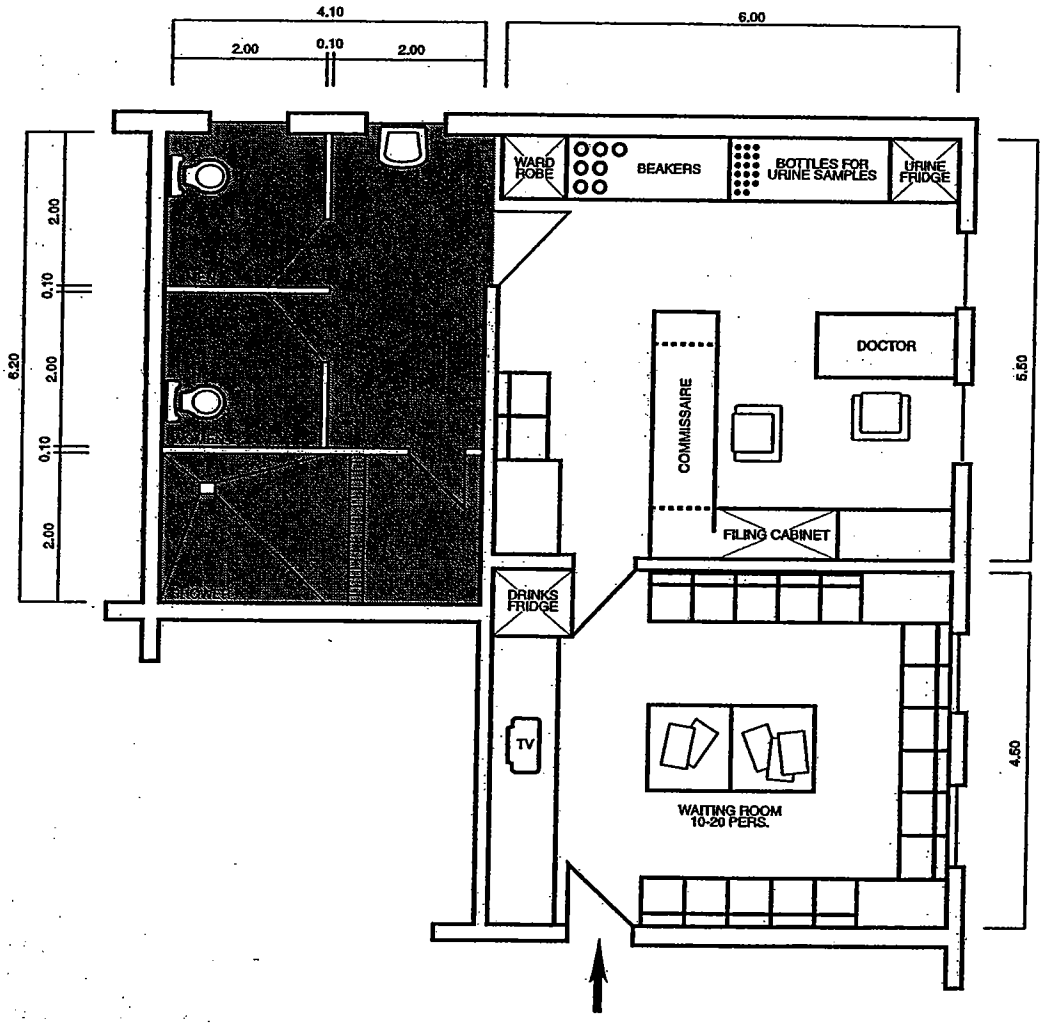
7. World BMX championships

for each category
- winner
- 2 selected at random

(text modified 1.01.06).

(Appendix 4)

PLAN OF STANDARD TESTING STATION FOR ANTIDOPING TESTS



(Appendix 5)

EQUIPMENT OF THE DOPING CONTROL STATION

The doping control station must be equipped in such a way to facilitate the running of the tests. A suggested list non exhaustive of equipment is included in mentioned hereafter:

Equipment to be made available:

- Anti-doping kits*
- containers for the taking
- gloves
- provisional seal kits
- plastic bags in reserve
- packaging to send the kits
- adhesive tape
- envelopes
- string
- scissors
- drinks in large quantities (such as lemonade, mineral water, etc.)

* in sufficient number to allow the choice between two kits at least.

Furnishings

First room (20-25 m²)
- 2 tables
- 8 chairs
- 1 refrigerator
- 1 waste bin
- 1 telephone connection (phone and fax).

Second room
- 2 tables
- 3 chairs
- toilet (WC)
- sink, shower
- 1 waste bin
- towels and soap
- ventilation or opening window.

(text modified on 1.01.06).

(Appendix 6)

On chemical self-copying paper in triplicate (1 original and 2 copies).
Original to UCI - Copy 1 (white) to the rider - Copy 2 (green) to the laboratory.
(articles 163 to 165 of the Anti-Doping Rules)

Union Cycliste Internationale
ANTIDOPING CONTROL

Test certificate

Urine test o Blood test o
1. In competition o 2. Sex: Male o
Hors-compétition o Female o
3. Date: 4. Place
5. Race (name, stage): 6. Discipline:
7. Surname of the rider: First name:
Address of the rider:
8. UCI Code:
9. National federation which delivered the license
10. License number:
11. Random Yes o No o
12. Presentation time:
13. Time of sampling:
Volume pH* Specific gravity
* Optional
14. Bottle codes:
15. Time of rider's refusal:
16. Pharmaceutical drugs taken by the rider:
.....
Contents of the health booklet:
.....
17. Therapeutic use exemption (TUE) Yes o No o
18. Subject to the comments below, I confirm that the sample was taken in accordance with the regulations.
Rider's signature who also acknowledges receipt of his copy:
19. Assistant:
name signature
20. Examining doctor:
name signature
Blood collection officer:
name signature
21. Antidoping inspector:
name signature

(Appendix 7)

NOTIFICATION TO THE RIDER
(articles 138 to 144 of the Anti-Doping Rules)

Where applicable,
Name of the race

The rider
Name of the rider
Phone
UCI Code
National licence number
National federation which delivered the licence
is required to attend an anti-doping test (urine o blood o) at(time)
precisely at the following location:

If the rider does not attend the test, a violation of the UCI Anti-Doping Rules will be noticed and the rider could be sanctioned in accordance with Chapter X of these Rules.

Refusal (reasons)

This notification was issued
Place
Date
Time

Signature for receipt
The rider
and/or
The team leader/team manager
Name
Signature:
Anti-doping Inspector
Name
Signature

(text modified on 1.01.06).

(Appendix 8)

NO-SHOW REPORT
(articles 15.3 and 257 of the Anti-Doping Rules)

To be sent to the UCI
I the undersigned
appointed to officiate as Anti-Doping Inspector for the event
on at
do hereby certify that:
Rider No., who was properly designated to undergo the anti-doping tests and notified by all the means made available to me by the organiser, did not attend at the designated testing station within the deadline that conforms to the regulations.

- Time of arrival at the finish line
- End of the official ceremony.....
- Time when the rider's deadline was observed to have expired.....

In consequence, the present no-show report has been issued in his/her regard.
Done in, at
Signature of the Anti-Doping Inspector

for nomination[1]
m Placing at the finish
m Drawn by lot.....
m Reserve.....
m Instructions of the Anti-Doping Commission.....

Means used to notify the rider[1]
m Posted at the finish line.....
m Radio announcement to.....
m Posted on the door of the testing station.....
m Written summons issued
m Others

Distance from finish line to the testing station

Further information on the rider
Name.....
First name.....
Nationality
National licence number
UCI Code

[1] Check as appropriate
(text modified on 1.01.06).

(Appendix 9)

NOTIFICATION TO THE RIDER OF A POSITIVE RESULT (article 212 of the Anti-Doping Rules)

Name of the race
The rider
- name
- UCI Code
- national licence number
- national federation which delivered the license

is hereby informed that he/she was found to have tested positive after the following
Name of the stage
Date of the stage
or name of the six-day event.....
Date of testing.....
The analysis carried out at the following laboratory
Name of laboratory
Full address.....
has shown the presence of
Name of the substances or methods.....
.....
The rider has been questioned. He/she has received the form to request for a counter-analysis.
Please note:
1) The rider has the right to request counter-analysis;
2) Such a request must be submitted to the inspector within 3 hours of receiving the present notification specified in article 212;
3) If not, the rider shall automatically be disqualified.

Done on:
Date..... Place Time

By:
Name the president of the commissaires panel
Signature.....

Rider's comments.....
Rider's signature

Name and signature of the rider's assistant.....

(text modified on 1.01.06).

(Appendix 10)

REQUEST FOR COUNTER-ANALYSIS
(articles 212 to 216 of the Anti-Doping Rules)

(to be submitted to the Inspector within 3 hours of notification of the positive result).

Name of the race
The undersigned
Name and surname of the rider
UCI Code
National licence number
National federation which delivered the license

requests a counter-analysis in connection with the positive result of the anti-doping tests
Name and date of the stage for which the result was positive
Date of anti-doping test (six-day events)

Done on:
Place
Date
Time
Signature of rider

Request received at
Place
Date
Time

by:
Name of the Anti-Doping Inspector
Signature

Copy of the request received by
Name
Signature

(text modified on 1.01.06).

(Appendix 11)

LIST OF MEDICINES TAKEN
(article 299 of the Anti-Doping Rules)

Name of the race..... Country.....
Date of the race.....
Team/Club
The undersigned team/club doctor
Name and address
.....
declare that in the 72 hours prior to the start of the event the following riders* have taken medicines or undergone treatment as follows:

Rider	Medicine or treatment (indicate dose and manufacturer)
1.	
.....	
2.	
.....	
3.	
.....	
4.	
.....	
5.	
.....	
6.	
.....	
7.	
.....	
8.	
.....	
9.	
.....	
10.	
.....	

Date.....
Signature.....

* N.B.- All the riders of the team/club taking part in the event must be listed; where applicable indicate «none».

(Appendix 12)

CODE OF SPORTS-RELATED ARBITRATION (CAS)

(available on request)

TAB 2

BYLAWS

OF

THE UNITED STATES OLYMPIC COMMITTEE

BYLAWS OF THE

UNITED STATES OLYMPIC COMMITTEE

ARTICLE I

NAME, OFFICES, AND DEFINITIONS

Section 1.1 The Corporation. The name of this organization, incorporated by an Act of Congress on September 21, 1950, as amended August 10, 1964, November 8, 1978, July 8, 1980 and October 21, 1998 (36 USC § 220501, *et seq.*) ("the Act"), shall be the UNITED STATES OLYMPIC COMMITTEE (the "corporation"), and the corporation shall be exempt from taxation within the meaning of Section 501(c)(3) of the Internal Revenue Code. To the extent that the Act refers to the corporation's "constitution and bylaws," such reference shall be deemed to refer to these Bylaws.

Section 1.2 Business Offices. The principal office of the corporation is located at One Olympic Plaza, Colorado Springs, Colorado 80909. The registered office of the corporation may be, but need not be, the same as the principal office, and the address of the registered office may be changed from time to time by the Board.

Section 1.3 Definitions. As used in these Bylaws the term --

A. "AAC" means the corporation's Athletes' Advisory Council;
B. "amateur athlete" means any athlete who meets the eligibility standards established by the National Governing Body or Paralympic Sports Organization for the sport in which the athlete competes;
C. "amateur athletic competition" means a contest, game, meet, match, tournament, regatta, or other event in which amateur athletes compete;
D. "amateur sports organization" means a not-for-profit corporation, club, federation, union, association, or other group organized in the United States which sponsors or arranges any amateur athletic competition;
E. "Board" means the corporation's board of directors;
F. "CEO" means the corporation's chief executive officer;
G. "corporation" means the United States Olympic Committee;
H. "IF" means the international federation for a particular sport;
I. "international amateur athletic competition" means any amateur athletic competition between any athlete or athletes representing the United States, either individually or as a part of a team, and any athlete or athletes representing any foreign country[1];

[1] This term is not intended to be limited to athletes or teams known as "national" teams of the United States. In the context of this definition, it is intended that any United States amateur sports organization which wishes to conduct or sponsor amateur athletic competition between the United States amateur athletes, or teams of United States amateur athletes representing such organization and athletes or teams of amateur athletes representing a foreign country or institution, must obtain a sanction from the appropriate National Governing Body or Paralympic Sports Organization.

J. "IOC" means the International Olympic Committee;
K. "IPC" means the International Paralympic Committee;
L. "NGB" means any national governing body which is an amateur sports organization recognized by the corporation in accordance with Article X of these Bylaws;
M. "NGB Council" means the corporation's National Governing Bodies Council;
N. "PASO" means the Pan American Sport Organization, a confederation of national Olympic committees from the Americas;
O. "PSO" means a paralympic sports organization which is an amateur sports organization recognized by the corporation in accordance with Article X, Section 10.6 of these Bylaws;
P. "protected competition" means any amateur athletic competition between any athlete or athletes officially designated by the appropriate NGB or PSO as representing the United States, either individually or as part of a team, and any athlete or athletes representing any foreign country where

1. the terms of such competition require that the entrants therein be teams or individuals representing the respective nations; and
2. the athlete or group of athletes representing the United States are organized and sponsored by the appropriate NGB or PSO in accordance with a defined selection or tryout procedure that is open to all and publicly announced in advance, except for domestic amateur athletic competition, which, by its terms, requires that entrants therein be expressly restricted to members of a specific class of amateur athletes such as those referred to in Section 220526(a) of the Act.

The term "protected competition" shall also include any domestic amateur athletic competition or event organized and conducted by a NGB or PSO in its selection procedure and publicly announced in advance as a competition or event directly qualifying each successful competitor therein as an athlete representing the United States in a protected competition as defined in the immediately preceding sentence of this Subsection.

Q. "sanction" means a certificate of approval issued by a NGB[2]; and
R. "quadrennium" means the four-year (4-year) period that begins with the first meeting of the Board after the Summer Olympic Games and extends until convening the first meeting of the Board following the next Summer Olympic Games.

Correlatively, a NGB or PSO must sanction such international amateur athletic competition upon satisfaction by the applicant organization of the objective and nondiscriminatory sanction criteria set forth in Section 220525 of the Act. This definition is not intended to change the prevailing practices which vary from sport to sport with respect to sanctioning of regular "border" scholastic or collegiate competition between American and Canadian or Mexican educational institutions, nor is any provision in these Bylaws intended to authorize a NGB or PSO to designate or select (as distinct merely from certifying on request the eligibility or amateur status of) the United States amateur athletes or team of United States amateur athletes to participate in an international competition other than one involving a United States national team.

[2] This term is being used in the sense of giving effective approval or consent, not as a penalty or punishment to enforce or compel obedience.

Section 1.4 Jurisdiction. The corporation shall enforce and comply with all rules and regulations of the IOC, PASO, and the IPC. Pursuant to the authority granted by the IOC, PASO, and the IPC, the corporation shall have exclusive jurisdiction to enter competitors who will represent the United States in the Olympic Games, the Pan American Games and the Paralympic Games, and to enforce in connection therewith the definition of an eligible athlete adopted by the IOC, PASO, and the IPC.

ARTICLE II

THE MISSION

Section 2.1 Mission Statement. The mission of the corporation shall be:

To support United States Olympic and Paralympic athletes in achieving sustained competitive excellence and preserve the Olympic ideals, and thereby inspire all Americans.

Section 2.2 Purposes. The purposes of the corporation are set forth in Section 220503 of the Act and shall be reviewed and prioritized by the corporation's Board on an ongoing basis as it oversees the business of the corporation to advance and achieve the corporation's mission. The Board shall consult with and consider the views and recommendations of the corporation's CEO as it prioritizes the purposes and sets all other policies of the corporation.

ARTICLE III

THE BOARD

Section 3.1 General Powers. The business and affairs of the corporation shall be overseen by the Board, except as otherwise provided in the Act or these Bylaws. The Board shall have ultimate authority over the business, policies, affairs, and activities of the corporation, including, but not limited to, the authority to elect the Chair of the Board and to remove the Chair or any other member of the Board or any Committee or any member of the Olympic Assembly for cause or not for cause; to hire and fire the CEO; to enact, amend, or repeal provisions of these Bylaws; to admit new members, to reclassify and to terminate the membership of members, as provided by these Bylaws; to receive and review the reports of the CEO and committees and task forces; to approve the selection of independent auditors; to maintain a culture of ethical behavior and compliance throughout the corporation; to achieve as much transparency in the operations of the corporation as is reasonably achievable and to keep the Olympic Assembly and the stakeholders in the Olympic movement in the United States informed about the business and operations of the corporation; and to take such other action as is customary for a board of directors of a corporation. Further, the Board shall evaluate and set the compensation for the CEO; set the strategic plan, budget and corporate performance measures; create policy direction for the CEO and staff on significant issues facing the corporation; monitor the financial reporting process and the legal and regulatory compliance program; be responsible

for communicating with relevant members; set policy on capital structure, financial strategies, borrowing commitments and long range financial planning; monitor the corporation's assets to ensure that they are being properly protected; and ensure that the Board is properly structured and is capable of acting in case of an unforeseen corporate crisis. The Board may seek assistance in these tasks from the committees it appoints, but the Board shall remain ultimately responsible for ensuring these tasks are carried out appropriately.

Section 3.2 Composition and Voting. The composition of the Board shall be as follows: four independent members ("independent directors") selected by the Nominating and Governance Committee, two members selected by the Nominating and Governance Committee from among individuals nominated by the National Governing Bodies' Council ("NGB Council"), two members selected by the Nominating and Governance Committee from among individuals nominated by the Athletes' Advisory Council ("AAC"), and the United States members of the IOC who shall be *ex officio* directors on the Board, *i.e.* they assume their positions as directors on the corporation's Board by virtue of, and for the same term as, their IOC membership. The IOC members for the United States shall each have one vote, and the other directors shall each have a vote equal to the number of United States members of the IOC who are at that time serving on the corporation's Board. The IOC members for the United States and all the other members of the Board shall be entitled to vote on all issues presented to the Board as to which they do not have a conflict of interest. The CEO shall be entitled to attend Board meetings and shall be free to speak but not vote on all matters other than those concerning the CEO's employment. The Board shall hold at least two executive sessions during regularly scheduled Board meetings each year during which the CEO shall not be present and at which the members of the Board shall discuss issues including, but not limited to, the performance of the corporation and the CEO. Board members should not participate in discussions or voting concerning issues with respect to which they have a conflict of interest.

Section 3.3 AAC and NGB Council Nominated Directors. The members of the Board selected by the Nominating and Governance Committee from individuals nominated by the AAC and the NGB Council, along with the United States members of the IOC, shall represent the Olympic sports in the United States and the NGBs for those sports, and shall collectively constitute a majority of the membership and voting power of the Board. The directors nominated by the AAC and the NGB Council, upon their taking office, must at that time resign from affiliation with or participation in the AAC, the NGB Council, and any governance or committee position with any NGB or other organization that is a member of the corporation, as applicable.

Section 3.4 Independence.

A. A director will not be considered an "independent director" for purposes of Section 3.2 if, at any time during the two years preceding commencement of or during his or her term or position as a director:

 1. the director was employed by or held any paid position or any volunteer governance position with the corporation, a corporation-member sports governing body, the IOC, an Organizing Committee for the Olympic Games ("OCOG"), Pan American Sports Organization ("PASO"), Paralympic Sports Organization

("PSO"), the Association of National Olympic Committees ("ANOC"), or any Olympic family entity;

2. an immediate family member of the director was employed by or held any paid position or any volunteer governance position with the corporation, a corporation-member sports governing body, the IOC, an OCOG, PASO, a PSO, ANOC, or any Olympic family entity;
3. the director was affiliated with or employed by the corporation's outside auditor or outside counsel;
4. an immediate family member of the director was affiliated with or employed by the corporation's outside auditor or outside counsel as a partner, principal or manager; or
5. the director was a member of the AAC or the NGB Council.

B. A director will not be considered independent if at any time during the two years preceding commencement of or during his or her term or position as a director the director receives any compensation from the corporation, directly or indirectly. For purposes of this rule, compensation does not include reimbursement of out of pocket expenses incurred for the benefit of the corporation or receipt of any benefits, subsidies or payments generally available to athletes or elite athletes to support their training.

C. A director will not be considered independent if at any time during the two years preceding commencement of or during his or her term or position as a director the director is an officer, member of senior management, controlling shareholder, or partner of a corporation or partnership or other business entity that does business with the corporation.

D. A director will not be considered independent if at any time during the two years preceding commencement of or during his or her term or position as a director the director or the director's spouse is an officer, employee, director, or trustee of a nonprofit organization to which the corporation or the U.S. Olympic Foundation makes payments in any year in excess of 5 percent of the organization's consolidated gross annual revenues, or $100,000, whichever is less. The Ethics Committee also will administer standards concerning any charitable contributions to organizations otherwise associated with a director or any spouse or other family member of the director. The corporation shall be guided by the interests of the corporation and its stakeholders in determining whether and the extent to which it makes charitable contributions.

E. The definitions of independence set out in this Article for "independent directors" shall also be used to determine whether an individual is independent for other purposes, as set forth in these Bylaws. For example, when a member of the Ethics Committee or the Nominating and Governance Committee is required to be independent, these definitions of independence shall be applied.

F. When the guidelines in this Section 3.4 do not address a particular relationship, the determination of whether the relationship is material, and whether a director is independent, will be made by the Nominating and Governance Committee if it concerns a person nominated or under consideration for selection to be a member of the Board or to be a member of the Ethics Committee or the Nominating and

Governance Committee. If the issue concerns an individual who is already serving as a member of the Board, the Ethics Committee, or the Nominating and Governance Committee, the determination shall be made by members of the Board who occupy the independent director seats on the Board (with the Board member whose independence is at issue not voting if the issue concerns a current member of the Board), after receiving the recommendation of the Nominating and Governance Committee.

G. The Nominating and Governance Committee may determine that, in its judgment, a director who does not meet these guidelines strictly nonetheless, under all the facts and circumstances, does not have a relationship with the corporation or any organization, entity, or individual associated with the corporation that would interfere with the perception or reality of the director's independent judgment, and that such a person may nevertheless be independent or an independent director under these Bylaws.

H. The Nominating and Governance Committee shall review at least annually the independence of "independent directors" and others who are required by these Bylaws to be independent.

Section 3.5 Term. The term limit for a member of the Board is six consecutive years, consisting of an initial term of four (4) years and a subsequent term of two (2) years that is subject to a vote of retention by the Nominating and Governance Committee as provided in Section 3.22, below. The members of the Board shall have staggered terms as follows: As soon as possible following the fall 2003 meeting of the Board, the Nominating and Governance Committee shall select the initial eight non-IOC members of the Board. As designated by the Nominating and Governance Committee, three (3) of these members (one (1) independent director, one (1) director selected from the individuals nominated by the NGB Council, and one (1) director selected from the individuals nominated by the AAC) shall have terms that expire in September of 2006, two of these members (two (2) independent directors) shall have terms that expire in September or October of 2008, and three (3) of these members (one (1) independent director, one (1) director selected from the individuals nominated by the NGB Council, and one (1) director selected from the individuals nominated by the AAC) shall have terms that expire in September of 2010. Thereafter, the term of each new member of the Board shall be for a full six-year term (unless a new member is filling the unexpired term of a director) consisting of a four-year term and a two-year term, with the two-year term subject to a vote of retention by the Nominating and Goverance Committee. Notwithstanding the above, any board member who serves for less than four years may serve for a subsequent six-year term if selected again by the Nominating and Governance Committee, and a director who is the Chair at the conclusion of his or her first term as a member of the Board shall be eligible to serve for a subsequent six-year term if selected again by the Nominating and Governance Committee, as specified in Section 4.2 of these Bylaws.. Each director shall hold office until such director's successor shall have been elected and qualified, or until such director's earlier death, disability, resignation, disqualification or removal. The first two-year term for Board members shall run from whenever a new Board is selected and qualified in early 2004 to the first business day after September 1, 2006. The Board members' staggered terms should end (and new Board members' terms of office should begin) on the first business day after September 1 every even-numbered year (2006, 2008, 2010, etc.) or the first business

day more than thirty days after the conclusion of the Olympic and Paralympic Games every even-numbered year, whichever is later.

Section 3.6 Qualifications. Directors must be citizens of the United States and at least eighteen years old.

Section 3.7 Resignations/Vacancies/Removal. A director's position on the Board may be declared vacant upon the resignation, removal, incapacity, disability, or death of a director. Any director may resign at any time by giving written notice to the Secretary of the corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Directors shall be removed by the Board if they fail to attend in person more than one half of the regular meetings of the Board during any twelve-month period, unless they are able to demonstrate to the other members of the Board that the presence of exigent circumstances caused and excused the absences. In such circumstances, the absent director can be removed by a vote of the majority of the voting power of the Board (not including the voting power of the absent director). Directors may also be removed for cause at any duly noticed meeting of the Board, and after being provided an opportunity for the Board member to be heard by the Board, upon the affirmative vote of at least two-thirds of the total voting power of the Board (excluding the voting power of the director in question). Directors may also be removed not for cause at any duly noticed meeting of the Board upon the affirmative vote of at least three-fourths of the total voting power of the Board (excluding the voting power of the director in question). Any vacancy occurring in the Board shall be filled as set forth for the election of that member of the Board. A director elected to fill a vacancy shall be elected for the unexpired term of such director's predecessor in office. No director shall be subject to removal based upon how they vote as a director, unless such voting is determined to be part of a violation of the Code of Ethics.

Section 3.8 Regular Meetings. Regular meetings of the Board shall be held in person at the time and place determined by the Board. The Board shall hold a minimum of four regular meetings per calendar year, but it may hold additional regular meetings. At least one regular meeting of the Board shall be held in association with the Olympic Assembly.

Section 3.9 Special Meetings. Special meetings of the Board may be called by or at the request of the Chair or at the request of directors holding a majority of the overall voting power of the Board. The Chair may fix any appropriate place as the place for holding any special meeting of the Board, but special meetings may also be held in accordance with Section 3.10.

Section 3.10 Meetings by Telephone and Transacting Business by Other Means. Members of the Board or any committee thereof may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting for purposes of a quorum and voting, but not for purposes of the attendance requirement in Section 3.7 of these Bylaws. The Board shall have the power to transact its business by mail, electronic-mail, telephone, or facsimile, if in the judgment of the Chair the urgency of the case requires such action; but if directors holding one-

third (1/3) of the voting power of the Board indicate their unwillingness to decide such a matter in such manner, the Chair must call a meeting of the Board to determine the question at issue.

Section 3.11 Agenda. The agenda for a meeting of the Board shall be set by the Chair of the Board, after consultation with the CEO. Any Board member and the Chairs of the NGB Council, AAC, and the Multisport Organizations Council may request that items be placed on the Board's agenda.

Section 3.12 Notice. Notice of each meeting of the Board, stating the place, day and hour of the meeting, along with the agenda and any supporting materials, shall be given to each director at the director's business address (or such other address provided by the director for such purpose) at least five (5) days prior thereto by the mailing of written notice by first class, certified or registered mail, or at least two (2) days prior thereto by personal delivery of written notice or by telephonic, facsimile or electronically transmitted notice (and the method of notice need not be the same as to each director). If mailed, such notice shall be deemed to be given when deposited in the United States mail, with postage thereon prepaid. If transmitted by facsimile or electronic transmission, such notice shall be deemed to be given when the transmission is received. Any director may waive notice of any meeting before, at or after such meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the Board need be specified in the notice or waiver of notice of such meeting unless otherwise required by statute.

Section 3.13 Presumption of Assent. A director of the corporation who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless such director's dissent shall be entered in the minutes of the meeting or unless the director shall file a written dissent to such action with the person acting as the Secretary of the Board before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the board immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 3.14 Quorum and Proxies.

A. A simple majority of the total voting power of the Board shall constitute a quorum for the transaction of business at any meeting of the Board, and the vote of a majority of a quorum shall be the act of the Board.
B. If less than a quorum is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice other than an announcement at the meeting, until a quorum shall be present.
C. No director may vote or act by proxy at any meeting of directors.

Section 3.15 Action Without a Meeting. Any action required or permitted to be taken at a meeting of the directors or any committee thereof may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors or committee members entitled to vote with respect to the subject matter thereof. Such consent

(which may be signed in counterparts) shall have the same force and effect as a unanimous vote of the directors or committee members.

Section 3.16 Compensation. Directors shall not receive compensation for their services as such, although the reasonable expenses of directors may be paid or reimbursed in accordance with the policies of the corporation. Directors shall not be disqualified to receive reasonable compensation for services rendered to or for the benefit of the corporation in any other capacity, provided that the rendering of such services and such compensation are approved by the Ethics Committee or Board policies.

Section 3.17 Director Attendance. Each director must attend a minimum of at least one half (1/2) of the Board meetings during any twelve-month period. If a director fails to meet this minimum, without prior excusal, a vacancy shall be declared and filled by the Nominating and Governance Committee unless the absent Board member seeks to demonstrate and is able to demonstrate to the satisfaction of the other members of the Board that the presence of exigent circumstances caused and excused the absences, in accordance with Section 3.7.

Section 3.18 Effectiveness of Actions. Actions taken at a meeting of the Board shall become effective immediately following the adjournment of the meeting, except as otherwise provided in the Bylaws or when a definite effective date is recited in the record of the action taken.

Section 3.19 Questions of Order and Board Meeting Leadership. Questions of order shall be decided by the Chair of the Board unless otherwise provided in advance by the Board. The Chair of the Board shall lead meetings of the Board. If the Chair is absent from any meeting of the Board, then the Chair shall designate in writing in advance one other member of the Board to preside. If the Chair is unable to make or has not made such a designation, the Board may choose another member of the Board to serve as presiding officer for that meeting.

Section 3.20 Olympic Games Participation. Any motion before the Board which would seek to prevent the corporation from participating in the Olympic Games, or which would not allow the team representing the United States to participate in the Olympic Games, or any motion having the same effect as the above, shall require that at least ¾ of the voting power of the Board vote in favor of such a motion.

Section 3.21 Submission of Specific Olympic Issues to Further Review. In the event that the Board votes, in accordance with the provisions of Section 3.20 of these Bylaws, to prevent or not allow the corporation or the team representing the United States to participate in the Olympic Games, or to take any action having that effect, the Board must submit the issue to a vote of a body composed of (a) the members of the Board, (b) the NGB Council representative of each Olympic NGB, and (c) Olympic sports athletes in the AAC, with one athlete representing each of the Olympic sports. The issue must be noticed a reasonable time before a meeting of that body, pursuant to procedures established by the Board, and for the motion to have any effect it must be approved by that body by a ¾ vote of the members of that body present, with each member of that body having one vote. If there are other issues as to which the Board decides, by a vote of a majority of the full voting power of the Board, that it should secure guidance or a broad United States Olympic consensus, it may submit those issues to the above-referenced body

for review or approval of action proposed by the Board. If the Board does decide to refer any additional issues to the above-referenced body, the procedure and vote required for approval should be specified by the Board.

Section 3.22 Vote of Retention After Four Years. If a director has been elected to serve a six-year term and has served four years, prior to the commencement of his or her final two years of service on the Board he or she shall be subject to a vote of retention by the Nominating and Governance Committee. The Nominating and Governance Committee shall vote as to whether the director shall be retained to serve the remaining two (2) years of the term or whether that director position shall be opened to be filled by a new director. The strong presumption shall be in favor of retention of the director and the director shall be retained unless there is a majority vote of the Nominating and Governance Committee against retention.

Section 3.23 Auditors. The accounts and financial reports of the corporation shall be audited by an independent firm of auditors. The independent firm of auditors shall be selected by the Board after the Board receives and considers the recommendation of the Audit Committee.

ARTICLE IV

OFFICERS

Section 4.1 Number and Qualifications. The officers of the corporation shall be a Chair of the Board ("Chair"), Vice President International and a Secretary. The Vice President International shall be appointed by the Board of Directors, from among the existing Board members. The Secretary shall be the corporation's general counsel or another appropriate employee of the corporation designated by the CEO.

Section 4.2 Election and Term of Office. The initial Chair shall be selected by the Nominating and Governance Committee from any of the non-IOC members of the Board to serve for a term between one year and eighteen months, as determined by the Board. Subsequent to the initial term of the initial Chair, the Chair shall be elected by the Board for a term to be set by the Board, at the next regular meeting of the Board. If the election of Chair shall not be held at such meeting, such election shall be held as soon as convenient thereafter. The Chair shall hold office until the Chair's successor shall have been duly elected and shall have qualified, or until the Chair's earlier death, resignation, disability, disqualification, termination, or removal. If a director is serving as the Chair when his or her initial term as director ends, he or she shall be eligible to be considered by the Nominating and Governance Committee as a possible candidate to serve one additional six-year term as a director. If a director is serving as the Chair of the Board when his or her second term as director ends (because his or initial term was less than four (4) years), he or she shall not be eligible to be considered by the Nominating and Governance Committee as a possible candidate to serve another term as director. The appointment of Vice President International's term shall end automatically when his/her term on the Board ends or when the Board designates a different Board member to serve as Vice President International. The corporation employee's term as Secretary shall end automatically when his or her employment by the corporation ends or when the CEO designates a different individual to serve

as Secretary. In any circumstance in which the CEO has not designated an employee to serve as Secretary, the Board may select a Board member or another individual employed by the corporation to serve as Secretary until a new Secretary is designated by the CEO.

Section 4.3 Compensation. The Chair shall not receive compensation for services as Chair, but the Chair shall be reimbursed for reasonable expenses incurred by the Chair in the course of performing the Chair's duties, subject to the expense reimbursement policies of the corporation.

Section 4.4 Removal. The Chair may be removed from serving as Chair by the Board for or not for cause, as specified below. Removal from serving as Chair shall not, in and of itself, constitute removal from the Board. Selection to serve as the Chair or as a director shall not in itself create any contract rights.

Section 4.5 Vacancies. The Chair or the Vice President International or the Secretary may resign at any time from their positions as officers of the corporation by giving written notice to the Chair and the other members of the Board. An officer's resignation shall take effect at the time specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy in the office of Chair, however occurring, shall be filled by the Board for the unexpired portion of the term. A vacancy in the office of Vice President International or Secretary, however occurring, shall be filled in accordance with Section 4.2.

Section 4.6 Authority and Duties of Officers. The officers of the corporation shall have the authority and shall exercise the powers and perform the duties specified below and as may be additionally specified by the Board or these Bylaws, except that in any event each officer shall exercise such powers and perform such duties as may be required by law.

A. Chair of the Board. After the initial Chair of the Board is selected by the initial Nominating and Governance Committee, all Chairs that follow shall be elected by the directors. The Chair shall preside at all meetings of the directors, shall see that all Board commitments, resolutions, and oversight are carried into effect, and shall have and may exercise such powers and perform such other duties as may be assigned from time to time by the Board.
B. Vice President International. The Vice President International shall work in close cooperation with the Chief of International Relations in all international and Bid City issues.
C. Secretary. The Secretary shall (a) keep the minutes of the proceedings of the Board and any committees of the Board; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the corporation; and (d) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the CEO or by the Board. Assistant secretaries appointed by the Secretary, if any, shall have the same duties and powers, subject to supervision by the Secretary.

Section 4.7 Officers shall perform their functions with due care. No person may serve simultaneously as an officer of the corporation and as an officer of an organization holding membership in the corporation.

Section 4.8

A. Any officer may resign at any time by giving written notice to the Board. An officer's resignation is effective when the notice is received, unless the notice specifies a later effective date. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. An officer shall be deemed to have resigned in the event of such officer's incapacity as determined by a court of competent jurisdiction.
B. The Chair may be removed at any time for cause by the affirmative vote of two-thirds of the total voting power of the Board (excluding the voting power of the Chair). The Chair may be removed at any time not for cause by the affirmative vote of not less than three-fourths of the voting power of the Board (excluding the voting power of the Chair).

Section 4.9 In the event of death, disability, resignation or removal of the Chair, the office shall be filled by another director who is not a member of the IOC for the remainder of the unexpired term. The director who will fill the position of Chair shall be selected by a majority vote (with voting weighted as detailed in Section 3.2 of these Bylaws) of the members of the Board who are present at a properly called and conducted meeting of the Board.

Section 4.10 All officers, directors, and employees handling funds of the corporation shall be bonded or insured in such amounts as may be determined from time to time by the CEO. The expense of furnishing such bonds shall be paid by the corporation.

ARTICLE V

COMMITTEES AND TASK FORCES

Section 5.1 Committees. The corporation shall have the following committees: Audit, Compensation, Ethics and Nominating and Governance. By one or more resolutions adopted by a majority of the directors then in office, the Board or the CEO may designate one or more additional committees or task forces, each of which, to the extent provided in the resolution establishing such committee, shall have and may exercise all of the authority of the Board or the CEO, respectively, as is delegated to them by the Board or CEO respectively, except as prohibited by statute. The delegation of authority to any committee shall not operate to relieve the Board or any member of the board or the CEO from any responsibility imposed by law. Rules governing procedures for meetings of any committee of the Board shall be as established by the Board or, in the absence thereof, by the committee itself. Rules governing procedures for meetings of any committee established by the CEO shall be as established by the CEO.

Section 5.2 Audit Committee.

A. The Audit Committee shall consist of at least three and not more than five members, all of whom shall be members of the Board.
B. The Board shall appoint the members of the Audit Committee and its chair.
C. The Audit Committee shall include at least one member who is a member of the Board and was selected from among individuals nominated by the AAC.
D. The responsibilities of the Audit Committee shall include the following --

1. to discuss with management and the independent auditor the annual audited financial statements including matters required to be reviewed under applicable legal, regulatory or other requirements;
2. to discuss with management and the independent auditor, as appropriate, press releases and financial information provided to the public;
3. to recommend the independent auditor to examine the corporation's accounts, controls and financial statements. The Audit Committee shall have the authority to evaluate and recommend the independent auditor for selection by the Board pursuant to Section 3.23 of these Bylaws. The Audit Committee shall also have the authority to recommend to the Board that the independent auditor be replaced. The Audit Committee shall have the sole authority to approve all audit engagement fees and terms and the Audit Committee must pre-approve any non-audit service provided to the corporation by the corporation's independent auditor.
4. to discuss with management and the independent auditor, as appropriate, any audit problems or difficulties and management's response, and the corporation's risk assessment and risk management policies, including the corporation's major financial risk exposure and steps taken by management to monitor and mitigate such exposure.
5. to review the corporation's financial reporting and accounting standards and principles, significant changes in such standards or principles or in their application and the key accounting decisions affecting the corporation's financial statements, including alternatives to, and the rationale for, the decisions made.
6. to review and approve the internal audit staff function, including: (i) purpose, authority and organizational reporting lines; (ii) annual audit plan, budget and staffing; and (iii) concurrence in the appointment, and compensation of the Director of Internal Audit.
7. to review, with the CEO, Chief Financial Officer, Director of Internal Audit, General Counsel, independent auditors, and/or others, as the committee deems appropriate, the corporation's internal system of audit and financial controls and the results of internal and independent audits.
8. to be responsible for establishing procedures creating effective mechanisms for employees and others to make complaints relating to accounting practices, internal accounting controls, or audit matters, with provisions for confidential anonymous submission by employees and others. The Audit Committee shall have access to all complaints concerning the corporation's finances and their disposition, and shall provide safeguards to prevent retaliation against employees and others who make such complaints.

9. to obtain and review at least annually a formal written report from the independent auditor delineating: the auditing firm's internal quality-control procedures; any material issues raised within the preceding five years by the auditing firm's internal quality-control reviews, by peer reviews of the firm, or by any governmental or other inquiry or investigation relating to any audit conducted by the firm. The Audit Committee will also review steps taken by the auditing firm to address any findings in any of the foregoing reviews. Also, to assess auditor independence, the Audit Committee will review at least annually all relationships between the independent auditor and the corporation.
10. to prepare and publish an annual committee report in the corporation's annual report.
11. to recommend policies for the hiring of employees or former employees of the corporation's independent auditor.
12. to meet periodically, separately in executive session with each of management, the corporation's internal auditor, and the corporation's outside auditor. In addition, the Audit Committee, or a designated representative of the Committee, will meet prior to the release of the corporation's financial reports, to review such materials. The corporation's Director of Internal Audit, who is responsible for the corporation's internal audit function, will report functionally to the Audit Committee and operationally to the CEO.
13. to engage in such other functions as are assigned to the Audit Committee by the Board.

Section 5.3 Compensation Committee.

A. The Compensation Committee shall consist of at least three and not more than five members, all of whom shall be members of the Board.
B. The Board shall appoint the members of the Compensation Committee and its chair in consultation with the Nominating and Governance Committee.
C. The Compensation Committee shall include at least one member who is a member of the Board and was selected from among individuals nominated by the AAC.
D. The responsibilities of the Compensation Committee shall be as follows --

1. to assist the Board in developing and evaluating potential candidates for the CEO position, and to oversee the development of executive succession plans;
2. to review and approve on an annual basis the CEO's compensation in light of the Board's expectations, goals, and objectives. The Compensation Committee shall evaluate at least once a year the CEO's performance in light of these established goals and objectives and based upon these evaluations shall set the CEO's annual compensation, including salary, bonus, incentive, and any other compensation;
3. to review and approve on an annual basis the evaluation process and compensation structure for the corporation's senior executive management. The Compensation Committee shall also provide oversight of management's decisions concerning the performance and compensation of other corporation executives, and the corporation's policies concerning benefits, retirement plans and

contributions thereto, relocation benefits, and all other forms of benefits offered to the corporation's employees;

4. to review the corporation's incentive compensation and other compensation plans and recommend changes to such plans to the Board as necessary. The Compensation Committee shall have and shall exercise the authority of the Board with respect to the administration of such plans;
5. to conduct periodic review of the reasonableness of the compensation of the corporation's executives using relevant market benchmarks and survey data;
6. to review regularly management succession planning;
7. to maintain regular contact with the executive leadership of the corporation; and
8. to prepare and publish an executive compensation report in the corporation's annual report and other documents.

Section 5.4 Ethics Committee.

A. The Ethics Committee shall consist of five members. One member of the Ethics Committee shall be a member of the Board and shall also serve as chair of the Ethics Committee. The four (4) other members of the Ethics Committee shall not be members of the Board. The initial Ethics Committee appointed by the initial Nominating and Governance Committee shall function with four members and shall select a temporary chair from among its four members until the new Board is constituted and the new Board selects one of its members to serve as a member and chair of the Ethics Committee.

B. The Nominating and Governance Committee shall appoint the members of the Ethics Committee and its chair. All members of the Ethics Committee, other than the chair, must satisfy the standards of independence for "independent directors" as is set forth in Section 3.4 of these Bylaws. The Ethics Committee shall include at least twenty percent (20%) athletes who have competed as members of United States national teams in the Olympic, Pan American or Paralympic Games, or other major amateur international competition, within the ten (10) years preceding the date when they start serving as members of the committee (or, if they are a member of the Board, within the ten (10) years preceding when they started serving on the Board).

C. The responsibilities of the Ethics Committee shall be as follows -

1. to develop, administer and oversee compliance with the Code of Ethics;
2. to review the ethics and compliance staff functions, including: (i) purpose, authority and organizational reporting lines; (ii) annual ethics and compliance plan, budget and staffing; and (iii) the appointment and compensation of the internal ethics and compliance staff head;
3. to review, with the CEO, Chief Financial Officer, internal compliance staff head, General Counsel, or others, as the committee deems appropriate, the corporation's system of ethics and compliance;
4. to review and investigate any matters pertaining to the integrity of management, including conflicts of interest, or adherence to standards of business conduct as required in the policies of the corporation. This should include regular reviews of the ethics and compliance processes in general and the corporate ethics and compliance education, disclosure, and reporting processes in particular. In

connection with these reviews, the Ethics Committee will meet, as deemed appropriate, with the CEO, General Counsel, the ethics and compliance staff head, and others;

5. to prepare and publish an annual committee report in the corporation's annual report; and
6. to set policies for the hiring of employees or former employees of the corporation's member organizations, vendors/consultants, and Olympic family organizations.

Section 5.5 Nominating and Governance Committee.

A. The Nominating and Governance Committee shall consist of five (5) members.
B. Immediately following the fall 2003 meeting of the Board, the following five groups: the NGB Council, the AAC, the corporation's Public Sector Board of Director members seated at the start of the 2000 Quadrennium who are still members in the fall of 2003, the Independent Commission on Reform, and the corporation's Governance and Ethics Task Force, shall each appoint one individual to be a member of the initial Nominating and Governance Committee. All members of the initial Nominating and Governance Committee must meet the definition of independence as is set forth in Section 3.4 of these Bylaws. At least twenty percent (20%) of the Nominating and Governance Committee members shall be athletes who have competed as members of United States national teams in the Olympic, Pan American or Paralympic Games, or other major amateur international competition, within the ten (10) years preceding the date when they begin serving as members of the committee.
C. The responsibilities of the initial Nominating and Governance Committee shall include to select the initial eight members of the Board who are not members of the IOC, to select the initial Chair of the Board, and to select the initial members of the Ethics Committee. The initial Nominating and Governance Committee shall serve through June 30, 2006, and the members of the new (subsequent) Nominating and Governance Committee shall begin serving on July 1, 2006.

After the term of the initial Nominating and Governance Committee ends, the Board shall appoint two (2) Board members who are not members of the IOC and who are not eligible for re-selection to the Board to serve on each subsequent Nominating and Governance Committee. The three (3) remaining members of the subsequent Nominating and Governance Committee shall be selected one each by the NGB Council, the AAC, and the Multisport Organizations Council from individuals who are not on the existing Board and who meet the definition of independence as is set forth in Section 3.4 of these Bylaws. The Nominating and Governance Committee shall include at least twenty percent (20%) athletes who have competed as members of United States national teams in the Olympic, Pan American or Paralympic Games, or other major amateur international competition, within the ten (10) years preceding the date when they start serving as members of the committee (or, if they are a member of the Board, within the ten (10) years preceding when they started serving on the Board).

D. The responsibilities of the Nominating and Governance Committee shall include the following:

1. to lead the search for individuals qualified to become members of the Board and to select directors. The Nominating and Governance Committee shall select individuals to serve as directors who shall have the highest personal and professional integrity, who shall have demonstrated exceptional ability and judgment, and who shall be most effective, in conjunction with the other nominees to the Board, in collectively serving the long-term interests of the corporation;
2. to review the Board's committee structure and when requested by the Board to recommend to the Board for its approval possible candidates to serve as members of each committee. The Nominating and Governance Committee shall review and recommend committee slates annually and shall recommend additional committee members to fill vacancies, as requested by the Board;
3. to work with the CEO to develop and implement an appropriate orientation program for new directors and continuing education of existing directors;
4. to develop and recommend to the Board for its consideration a set of corporate governance guidelines. The Nominating and Governance Committee shall review the guidelines on an annual basis, or more frequently if appropriate, and recommend changes as necessary; and
5. to develop and recommend to the Board for its consideration an annual self-evaluation process of the Board and its committees. The Nominating and Governance Committee shall oversee the annual self-evaluations.

E. The Nominating and Governance Committee shall select the Board as follows: The Nominating and Governance Committee shall select four members from among those individuals identified by the Committee in cooperation with the Ethics Committee as satisfying the definition of independent director set forth in Section 3.4 of these Bylaws. The NGB Council shall nominate six (6) individuals for the two Board seats to be selected from among NGB nominees, and the Nominating and Governance Committee shall select two (2) directors from among the six (6) nominated by the NGB Council. The AAC shall nominate six (6) individuals for the two Board seats to be selected from among AAC nominees, and the Nominating and Governance Committee shall select two (2) directors from among the six (6) nominated by the AAC. After the selection of the initial directors, if a vacancy occurs or is about to occur in a position of a director selected from among individuals nominated by the NGB Council or the AAC, either because a director's term ended or because a director left the position before the term ended, that council (NGB Council or AAC) shall nominate three (3) individuals to be considered by the Nominating and Governance Committee for selection to be a director. If the term of a director selected from individuals nominated by the AAC or the NGB Council comes to an end (or is ending) before that director has served four years as a director (either because the director was selected to serve an initial two-year term or because the director is serving the end of another director's term) or if that director is the Chair of the Board when his or her initial term on the Board ends, that director shall be eligible to be selected to serve an additional six-year term, shall be considered to have been nominated again by the organization that nominated that director initially, and shall be considered in addition to the other three (3) nominees submitted by that

council. The Nominating and Governance Committee shall then decide whether one of the new nominees should be selected or whether the current director should be selected to serve a six-year term as a director.

Section 5.6 General Board Committee Powers/Requirements. Each Board committee shall have the authority to delegate any of its responsibilities to a sub-committee or to an individual member of the committee as the Board committee may deem appropriate in its discretion, subject to review and oversight by the Board. Each Board committee shall have the authority to retain such compensation consultants, outside counsel and other advisors as the Board committee may deem appropriate, consistent with the policies, budgets, and controls established by the Board. The Board committee in question shall have the authority to approve related fees and retention terms unless specifically restricted by the Board or restricted by policies established by the Board. Each Board committee shall report its actions and any recommendations and the attendance of its membership to the Board after each committee meeting and shall conduct and present to the Board an annual performance evaluation of the Board committee. Each Board committee shall review at least annually the adequacy of its charter and shall recommend any proposed changes to the Board for review and consideration.

Section 5.7 Term. The term of committee memberships shall run until the appointment of new committee members as determined by the Board. The absence of any committee member, without adequate excuse, from two or more consecutive meetings may be construed as his/her resignation from such committee by a majority vote of the Board. Members of any corporation committee or task force may be removed for cause upon the affirmative vote of at least two-thirds of the total voting power of the Board, after the member has been provided an opportunity to be heard by the Board. Members of any corporation committee or task force may also be removed not for cause upon the affirmative vote of at least three-fourths of the total voting power of the Board. The Board shall establish fair procedures for notice of allegations and the opportunity for an individual to be heard before any individual is removed from a corporation committee or task force for cause.

Section 5.8 Other Committees/Task Forces. The Board or the CEO may determine that additional committees or task forces are necessary to assist them in performing their respective functions and obligations and they shall appoint such committees or task forces as they deem appropriate and shall establish such procedures and guidelines and oversight of such committees as they deem necessary to ensure that those committees are accountable for their performance.

ARTICLE VI

THE CEO

Section 6.1 There shall be a CEO of the corporation, who shall report to the Board. Internationally, the CEO may also be referred to as the Secretary General of the corporation. The CEO shall be employed by the Board for whatever term the Board deems appropriate and may be removed at any time for or not for cause by the Board without prejudice to the CEO's contract

rights, if any, and the contract of employment between the corporation and the CEO, if any, shall provide that the CEO's employment may be terminated by the Board for cause or not for cause.

Section 6.2 The CEO shall either directly or by delegation, manage all staff functions; determine the size and compensation of, hire and terminate the professional staff in accordance with the corporation's compensation policies and guidelines established by the Compensation Committee and/or the Board; develop a strategy for achieving the mission, goals and objectives of the corporation for consistency with the policies of the Board; be responsible for resource generation and allocation; manage key international and government relationships and coordinate government relations and international activities of staff; act as the corporation's spokesperson; prepare and submit quadrennial and annual budgets to the Board; oversee the activities of all committees and task forces the CEO appoints; and perform such other functions as usually pertain to that office. The CEO shall implement the policies established by the Board and report to the Board concerning the results achieved.

Section 6.3 All official notices intended for the corporation or its Board, or any of its committees or task forces, may be addressed in care of the CEO, who will be responsible for proper attention thereto.

Section 6.4 The CEO shall devote his/her entire time and service to the affairs of the corporation and shall not engage in any other profession or employment (other than reasonable appropriate membership on boards of directors of other organizations as approved by the Ethics Committee and the corporation's Board). The CEO shall receive such salary and other benefits as shall be set forth in the CEO's contract of employment with the corporation, if any.

ARTICLE VII

THE OLYMPIC ASSEMBLY

Section 7.1 Once each year, in association with a regularly scheduled Board meeting, the corporation shall hold an Olympic Assembly. Representatives of all members of the corporation and the members of the AAC may choose to attend the Olympic Assembly as well as such others as the Board determines may attend. The Board shall determine the parameters for attendance at the Olympic Assembly, including but not limited to determining a limit on the number of attendees and the amount of travel expenses, if any, that the corporation will pay, associated with the attendance of individuals at the Olympic Assembly.

Section 7.2 The Board shall decide the time, place, and format of the Olympic Assembly. The Board, in conjunction with the CEO, shall provide information to the members of the Olympic Assembly on the affairs of the corporation, which shall include information on the performance of the organization, the financial performance and well being of the corporation, preparations for the Olympic, Pan American, and Paralympic Games, achievement of the corporation's mission, and actions taken, results achieved, and programs being implemented by the corporation.

Section 7.3 At the Olympic Assembly the members of the Olympic Assembly will have an opportunity to provide information and to communicate with the Board and the CEO concerning the performance, policies and other matters related to the corporation. Such input shall be advisory in nature and shall not be deemed to direct the Board or the CEO to take or not take any particular action. The Olympic Assembly shall not conduct or perform any governance functions.

Section 7.4 The Nominating and Governance Committee shall elect an individual to serve a two-year term as the Liaison from the Board to the Olympic Assembly. The Nominating and Governance Committee shall select the single Liaison from the Board to the Olympic Assembly from among six (6) nominees, two (2) submitted by the AAC, two (2) submitted by the NGB Council, and two (2) submitted by the Multisport Organizations Council. The Liaison from the Board to the Olympic Assembly shall work with the Chairs of the AAC, NGB Council, and Multisport Organizations Council and the Liaison shall chair the meetings of the Olympic Assembly. The Liaison from the Board to the Olympic Assembly shall not be a member of the Board, but shall serve as a liaison between the Board and the Olympic Assembly and between the Board and the various constituent councils and organizations of the Olympic Assembly, and shall report to the Board if and as requested by the Board on issues identified by the Board.

Section 7.5 The Board, NGB Council, AAC and Multisport Organizations Council shall each also meet in association with the Olympic Assembly in the same geographic location.

Section 7.6 The Board shall work with the CEO and the Liaison to the Olympic Assembly, along with the chairs of the three councils (NGB Council, AAC, and the Multisport Organizations Council) to design the sessions of the Olympic Assembly so as to facilitate communication between and among the Board, the CEO and senior management of the corporation, and the three councils (NGB Council, AAC, and Multisport Organizations Council) and their members, and to advance and achieve the mission of the corporation.

Section 7.7 Members of the Olympic Assembly may be removed for cause upon the affirmative vote of at least two-thirds of the total voting power of the Board, after the member has been provided an opportunity to be heard by the Board. Members of the Olympic Assembly may also be removed not for cause upon the affirmative vote of at least three-fourths of the total voting power of the Board.

ARTICLE VIII

COMPLAINTS AGAINST AN NGB OR PSO

Section 8.1 Complaint Procedure

A. Filing Complaint

1. Any amateur sports organization or person which belongs to, or is eligible to belong to, a NGB or PSO, or any member of the USOC Board, may seek to

compel such NGB or PSO to comply with the requirements of Section 10.5 or 10.6 of these Bylaws and Sections 220522-220525 of the Act by filing a written complaint with the corporation's CEO. A copy of the complaint shall also be served on the applicable NGB or PSO. The party filing the complaint shall file with the corporation proof of service on the NGB or PSO.

2. The complaint shall be in writing and signed under oath by the individual or the chief executive officer of the group or organization making the complaint. The complaint shall set forth the factual allegations in numbered paragraphs, each paragraph containing a single factual allegation, and shall contain, at a minimum, the following –

 a. names and addresses of the parties;
 b. jurisdictional basis of the complaint;
 c. efforts made to exhaust available remedies, or if such remedies have not been exhausted, the grounds upon which the complainant alleges that exhaustion would result in unnecessary delay;
 d. the alleged grounds of noncompliance;
 e. supporting evidence or documentation forming the basis of the complaint; and
 f. the relief sought.

B. Hearing Panel. A complaint filed under this provision shall be heard by a USOC hearing panel. The hearing panel shall consist of a panel of five (5) persons appointed by the USOC Chair. The hearing panel shall consist of one (1) member of the USOC Board or the Olympic Assembly (who shall chair the panel), two (2) individuals who are members of the USOC NGB Council, one (1) individual who is a member of the Multisport Organizations Council, and one (1) individual who is a member of the USOC Athletes' Advisory Council. The hearing panel shall not include any individual having a direct interest, either personally or by virtue of organizational affiliation, in the outcome of the proceeding.

C. Mediation. At the request of a party, the hearing panel may adjourn the proceeding to allow for mediation of the complaint. The hearing panel shall set a deadline for completion of the mediation. The USOC shall appoint a mediator, after consultation with the parties. The mediator shall not be a member of the hearing panel associated with the mediation.

D. Time Computation. In computing any period of time, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. The parties may modify any period of time by mutual agreement and consent of the hearing panel. The hearing panel may extend any period of time as it deems necessary.

E. Exhaustion of Remedies.

 1. The complainant or person may take such action only after having exhausted all remedies available under the organic documents of such NGB or PSO for correcting deficiencies, unless it can be shown by clear and convincing evidence that those remedies would have resulted in unnecessary delay.

2. The hearing panel shall determine whether the complainant has exhausted its remedies within the applicable NGB or PSO. If the USOC determines that such remedies have not been exhausted, it may direct that such remedies be pursued before the USOC will further consider the complaint.

F. Motion to Dismiss.

1. If the respondent contends that jurisdiction of the complaint is improper, that the complainant has failed to exhaust available remedies, that there is some other procedural or jurisdictional defect that would preclude a hearing on the merits, or that the complaint fails to state a claim upon which relief can be granted, it may move to dismiss the complaint. Such motion to dismiss shall set forth the grounds for dismissal and shall be filed within twenty (20) days after receipt of the complaint by the respondent.
2. The complainant shall be given the opportunity to submit papers in opposition to the respondent's motion to dismiss. The hearing panel shall determine whether or not to have argument on the motion to dismiss.

G. Answer.

1. If no motion to dismiss is filed, the respondent shall file an answer within twenty (20) days after receipt of the complaint by the respondent.
2. If the panel finds against the respondent with respect to its motion to dismiss, it shall direct the respondent to file an answer to the complaint within twenty (20) days after receipt of the denial of the motion to dismiss by the respondent.
3. If the respondent is without sufficient knowledge or information to admit or deny a given factual allegation, the respondent may so respond.

Section 8.2 Exchange of Information.

A. At the request of any party or at the discretion of the hearing panel, the hearing panel may direct (i) the production of documents and other information, and (ii) the identification of any witnesses to be called.
B. At least seven (7) business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing.
C. The hearing panel is authorized to resolve any disputes concerning the exchange of information.

Section 8.3 Hearing.

A. Provided that the complaint is not dismissed, the hearing panel shall hold a hearing on the complaint. The hearing panel shall set such timelines and other rules regarding the hearing as it deems necessary.
B. At any hearing all parties shall be given a reasonable opportunity to present oral or written evidence, to cross-examine witnesses, and to present such factual or legal claims as desired. Hearings shall be open to the public. In addition, the proceedings shall be stenographically recorded and a verbatim transcript thereof made available to

each interested party upon request and payment of costs associated with providing the transcript. The rules of evidence shall not be strictly enforced; instead, rules of evidence generally accepted in administrative proceedings shall be applicable.

C. The burden of proof shall be upon the complainant who shall also initially have the burden of going forward with the evidence. Upon completion of the presentation of the complainant's evidence, the respondent may move to dismiss for failure to satisfy the burden of proof. If such motion to dismiss is denied, the respondent shall then have the burden of going forward with evidence in opposition to the complaint and in support of its position.

D. The complainant must establish by a preponderance of the evidence that the NGB or PSO does not meet the criteria of Article X, Section 10.7.C of the Bylaws and/or Sections 220522-220525 of the Act.

Section 8.4 Finding.

A. If the hearing panel determines that such NGB or PSO is in compliance with the requirements of Article X, Section 10.5. or 10.6 of these Bylaws and Sections 220522 – 220525 of the Act, it shall so notify the USOC Board, the complainant and such NGB or PSO. The hearing panel shall provide a written decision on its findings.

B. If the hearing panel determines that such NGB or PSO is not in compliance with the requirements of Article X, Section 10.5. or 10.6 of these Bylaws and/or Sections 220522 – 220525 of the Act, it shall so notify the USOC Board, the complainant and such NGB or PSO. The hearing panel shall provide a written decision on its findings. Further, the hearing panel shall make a recommendation to the USOC Board as either to place the NGB or PSO on probation or to revoke the recognition of the NGB or PSO.

C. The USOC Board then shall –

1. place such NGB or PSO on probation for a specified period of time not to exceed one hundred eighty (180) days, which it considers necessary to enable such NGB or PSO to comply with such requirements; or
2. revoke the recognition of such NGB or PSO.

Section 8.5 Probation.

A. If a NGB or PSO is placed on probation, it shall, at the conclusion of the probationary period, submit a report to the hearing panel as to whether or not it is in compliance. The hearing panel shall then convene to consider the report.

B. If, after considering the report of the NGB or PSO, the hearing panel determines that such NGB or PSO is in compliance with the requirements of Article X, Section 10.5 or 10.6 of these Bylaws and Sections 220522 – 220525 of the Act, it shall it shall so notify the USOC Board, and the NGB or PSO.

C. If, after consideration of the report of the NGB or PSO, the hearing panel determines that such NGB or PSO is not in compliance with the requirements of Article X, Section 10.5 or 10.6 of these Bylaws and/or Sections 220522 – 220525 of the Act, it shall so notify the USOC Board and the NGB or PSO. If the hearing panel

determines that the NGB or PSO has proven by clear and convincing evidence that, through no fault of its own, it needs additional time to comply with such requirements, the hearing panel may recommend to the USOC Board that the probationary period be extended.

D. If, at the end of the probationary period allowed by the USOC, the NGB or PSO has not complied with such requirements, the USOC Board may revoke the recognition of such NGB or PSO.

Section 8.6 Arbitration.

A. There shall be no right of appeal to any other USOC body from a decision of the hearing panel or from a remedy imposed by the USOC Board. Any party that considers itself aggrieved by a decision of the hearing panel on the merits of the complaint or by a remedy imposed by the USOC Board may, within thirty (30) days after such decision or imposition of remedy, file a demand for arbitration with the American Arbitration Association (AAA).
B. A respondent shall be entitled in a demand for arbitration to raise any jurisdictional or procedural objection to the complaint raised in its original motion to dismiss, but determined against it by the panel that considered the jurisdictional or procedural challenge.
C. In the event a demand for arbitration is filed pursuant to the provisions of Section 8.6 of these Bylaws and at least eighty percent (80%) of the voting power of the Board that is present and voting at a Board meeting has voted in favor of a party to the complaint, the USOC shall, at the request of such party, undertake the defense of such party in the arbitration.
D. The arbitral award shall be binding upon the parties thereto, and unless the award is inconsistent with the terms of the Act, these Bylaws, or the rules of the IOC, upon the USOC.

Section 8.7 Application To Replace Procedure.

A. Any amateur sports organization may seek to replace an incumbent as the NGB or PSO for a particular sport by filing with the USOC a written application for such recognition with the USOC CEO. A copy of the application shall also be served on the applicable NGB or PSO. The party filing the application shall file with the USOC proof of service on the NGB or PSO.
B. If two (2) or more organizations file applications for the same sport, the applications shall be considered in a single proceeding.
C. The application shall set forth the factual allegations in numbered paragraphs, each paragraph containing a single factual allegation, and shall contain at a minimum the following -

 1. names and addresses of the parties;
 2. jurisdictional basis of the challenge;
 3. the factual basis upon which, pursuant to the criteria of Article X, Section 10.7.C of these Bylaws and Sections 220522 – 220525 of the Act, the applicant claims that it is entitled to replace the respondent; and

4. the relief sought.

A copy of the applicant's organic documents shall be appended to the application.

Section 8.8 Hearing Panel.

An application filed under this provision shall be heard by a USOC hearing panel. The hearing panel shall consist of five (5) persons appointed by the Chair. The hearing panel shall consist of one (1) member of the USOC Board or the Olympic Assembly (who shall chair the panel), two (2) individuals who are members of the USOC NGB Council, one (1) individual who is a member of the Multisport Organizations Council, and one (1) individual who is a member of the USOC AAC. The hearing panel shall not include any individual having a direct interest, either personally or by virtue of organizational affiliation, in the outcome of the proceeding.

Section 8.9 Mediation.

At the request of a party, the hearing panel may adjourn the proceeding to allow for mediation of the application. The hearing panel shall set a deadline for completion of the mediation. The USOC shall appoint a mediator, after consultation with the parties. The mediator shall not be a member of the hearing panel. The parties shall bear all costs associated with the mediation.

Section 8.10 Time Computation.

In computing any period of time, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. The parties may modify any period of time by mutual agreement and consent of the hearing panel. The hearing panel may extend any period of time as it deems necessary.

Section 8.11 Time Limitation.

An amateur sports organization shall file an application --

A. within the one-year (1-year) period after the final day of any Olympic Games in the case of a sport for which competition is held in the Olympic Games or Paralympic Games, or in both the Olympic and Pan American Games; or
B. within the one-year (1-year) period after the final day of any Pan American Games in the case of a sport for which competition is held in the Pan American Games and not in the Olympic Games.

Section 8.12 Motion to Dismiss.

A. If the respondent contends that jurisdiction of the application is improper, that the applicant has failed to exhaust available remedies, that there is some other procedural or jurisdictional defect that would preclude a hearing on the merits, or that the

complaint fails to state a claim upon which relief can be granted, it may move to dismiss the application. Such motion to dismiss shall set forth the grounds for dismissal and shall be filed within twenty (20) days after receipt of the application.

B. The applicant shall be given the opportunity to submit papers in opposition to the respondent's motion to dismiss. The hearing panel shall determine whether or not to have argument on the motion to dismiss.

Section 8.13 Answer.

A. If there is no procedural or jurisdictional objection to the application, the respondent must file an answer within twenty (20) days after receipt of the application by the respondent.
B. If the panel finds against the respondent with respect to its motion to dismiss, the panel shall direct the respondent to file an answer to the application within twenty (20) days after receipt of the denial of the motion to dismiss by the respondent.
C. If the respondent is without sufficient knowledge or information to admit or deny a given factual allegation, the respondent may so respond.

Section 8.14 Exchange of Information.

A. At the request of any party or at the discretion of the hearing panel, the hearing panel may direct (i) the production of documents and other information, and (ii) the identification of any witnesses to be called.
B. At least seven (7) business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing.
C. The hearing panel is authorized to resolve any disputes concerning the exchange of information.

Section 8.15 Hearing.

A. Provided that the application is not dismissed, the hearing panel shall hold a hearing on the application. The hearing panel shall set such timelines and other rules regarding the hearing as it deems necessary.
B. The USOC shall publish notice of the time and place of such hearing in a regular issue of its principal publication at least thirty (30) days, but not more than sixty (60) days, prior to the date of the hearing. The parties, at the direction of the hearing panel, shall send written notice, including a copy of the application, at least 30 days prior to the date of the hearing to all amateur sports organizations known to the USOC in that sport.
C. At any hearing all parties shall be given a reasonable opportunity to present oral or written evidence, to cross-examine witnesses, and to present such factual or legal claims as desired. Hearings shall be open to the public. In addition, the proceedings shall be stenographically recorded and a verbatim transcript thereof made available to each interested party upon request and payment thereof. The rules of evidence shall not be strictly enforced; instead, rules of evidence generally accepted in administrative proceedings shall be applicable.

D. The burden of proof shall be upon the applicant who shall also initially have the burden of going forward with the evidence. Upon completion of the presentation of the applicant's evidence, the respondent may move to dismiss for failure to sustain the burden of proof. If such motion to dismiss is denied, the respondent shall then have the burden of going forward with evidence in opposition to the challenge and in support of its position.

E. The applicant must establish by a preponderance of the evidence that -

1. it meets the criteria for recognition as a NGB or PSO under Article X, Section 10.5 or 10.6 of these Bylaws and Section 220522 of the Act; and
2. (i)the NGB or PSO does not meet the criteria of Article X, Section 10.5 or 10.6 of these Bylaws and Sections 220522 – 220525 of the Act; or
3. (ii) the applicant more adequately meets the criteria of Article X, Section 10.5 or 10.6 of these Bylaws and Section 220522 of the Act, is capable of more adequately meeting the criteria of Sections 220523-220524 of the Act, and provides, or is capable of providing, a more effective national and international program of competition than the NGB or PSO in the sport for which it seeks recognition.

Section 8.16 Finding.

A. If the hearing panel determines that such NGB or PSO should continue as the NGB or PSO for its sport the hearing panel shall so notify the USOC Board, the applicant and such NGB or PSO. The hearing panel shall provide a written decision that shall include the findings of the hearing panel and shall explain the basis for its decision.

B. If the hearing panel determines that such NGB or PSO would have retained recognition except for a minor deficiency in one of the requirements of Article X, Section 10.5 or 10.6 of these Bylaws and Sections 220522-220525 of the Act the hearing panel shall so notify the USOC Board, the applicant and the NGB or PSO. The hearing panel shall provide a written decision explaining its findings. The hearing panel shall also make a recommendation to the USOC Board to place the NGB or PSO on probation for a specified period of time not to exceed one hundred-eighty (180) days, pending compliance by the NGB or PSO.

C. If the hearing panel determines that the recognition of such NGB or PSO should be revoked, it shall it shall so notify the USOC Board, the applicant and such NGB or PSO. The hearing panel shall provide a written decision explaining its findings. Further, the hearing panel shall make a recommendation to the USOC Board either to –

1. declare a vacancy in the NGB or PSO for that sport; or
2. recognize the applicant as the NGB or PSO.

D. The USOC Board then shall –

1. place such NGB or PSO on probation for a specified period of time not to exceed one hundred eighty (180) days, which it considers necessary to enable such NGB or PSO to comply with such requirements; or
2. revoke the recognition of such NGB or PSO and declare a vacancy in the NGB or PSO for that sport; or
3. revoke the recognition of such NGB or PSO and recognize the applicant as the NGB or PSO for that sport.

Section 8.17 Probation.

A. If a NGB or PSO is placed on probation, it shall, at the conclusion of the probationary period, submit a written report to the hearing panel explaining and detailing whether or not it is in compliance. The NGB or PSO shall provide a copy of that report to the applicant.
B. If, after considering the report of the NGB or PSO, the hearing panel determines that such NGB or PSO is in compliance with the requirements of Article X, Section 10.5 or 10.6 of these Bylaws and Sections 220522-220525 of the Act, the hearing panel shall so notify the USOC Board, the applicant, and the NGB or PSO.
C. If, after consideration of the report of the NGB or PSO, the hearing panel determines that such NGB or PSO is not in compliance with the requirements of Article X, Section 10.5 or 10.6 of these Bylaws and Sections 220522-220525 of the Act, the hearing panel shall so notify the USOC Board, the applicant, and the NGB or PSO.
D. If, at the end of the probationary period allowed by the USOC, the NGB or PSO has not complied with such requirements, the USOC Board shall revoke the recognition of such NGB or PSO and either –

 1. recognize the applicant as the NGB or PSO; or
 2. declare a vacancy in the NGB or PSO.

Section 8.18 Arbitration.

A. There shall be no right of appeal to any other USOC body from a decision of the hearing panel or from a remedy imposed by the USOC Board. Any party that considers itself aggrieved by a decision of the hearing panel on the merits of the hearing panel's decision concerning the application or by a remedy imposed by the USOC Board may, within thirty (30) days after such decision or imposition of remedy, file a demand for arbitration with the American Arbitration Association (AAA).
B. A respondent shall be entitled in a demand for arbitration to raise any jurisdictional or procedural objection to the application raised in its original motion to dismiss, but determined against it by the hearing panel that considered the jurisdictional or procedural challenge.
C. In the event a demand for arbitration is filed pursuant to the provisions of Section 8.18.A of these Bylaws and at least eighty percent (80%) of the voting power of the Board that is present and voting at a Board meeting has voted in favor of a party to

the complaint, the USOC shall, at the request of such party, undertake the defense of such party in the arbitration.

D. If the final arbitration award upholds the claim of an amateur sports organization to replace the incumbent as the NGB or PSO for its sport:

 1. Such organization shall be deemed elected to Olympic membership, and the membership of the incumbent shall be deemed terminated without further action of the Board; and
 2. The incumbent shall cease to exercise the authority of a NGB or PSO as specified in Section 220523 of the Act.
 3. The Board shall, within sixty-one (61) days after such award, recommend and support in any appropriate manner the new NGB or PSO to the appropriate international sports organization for recognition by such federation or organization as the United States NGB or PSO in that sports, any provision to the contrary in Article X of these Bylaws notwithstanding. Such action shall include, without limitation, formally advising such federation of the decision of the Board and recommending acceptance of such action by the Federation as well.

E. In the event that there is a significant delay in the acceptance of the new NGB or PSO as the United States member in such federation, the Board shall take any and all interim steps that may be necessary, but which are not inconsistent with the other requirements of Article VIII of these Bylaws or Section 220529 of the Act, to protect the right of United States athletes to participate in international amateur athletic competition.

F. The arbitral award shall be binding upon the parties thereto, and unless the award is inconsistent with the terms of the Act, these Bylaws, or the rules of the IOC, upon the USOC.

ARTICLE IX

ATHLETES' RIGHTS

Section 9.1 No member of the corporation may deny or threaten to deny any amateur athlete the opportunity to participate in the Olympic Games, the Pan American Games, the Paralympic Games, a World Championship competition, or other such protected competition as defined in Section 1.3.P of these Bylaws nor may any member, subsequent to such competition, censure, or otherwise penalize, (1) any such athlete who participates in such competition, or (2) any organization which the athlete represents. The corporation shall, by all reasonable means at its disposal, protect the right of an amateur athlete to participate if selected (or to attempt to qualify for selection to participate) as an athlete representing the United States in any of the aforesaid competitions.

Section 9.2 Any amateur athlete who alleges that he/she has been denied by a corporation member a right established by Section 9.1, shall immediately inform the CEO, who shall cause an investigation to be made and steps to be taken to settle the controversy without delay. Without prejudice to any action that may be taken by the corporation, if the controversy

is not settled to the athlete's satisfaction, the athlete may submit to any regional office of the AAA ("AAA") for binding arbitration, a claim against such corporation member documenting the alleged denial as soon as is reasonably practicable, but not later than six (6) months after the date of denial. The athlete may submit the claim to the AAA simultaneously with the athlete's informing the CEO of the claim and the athlete does not have to wait for the CEO's investigation, but may pursue the claim immediately before the AAA. The AAA, however, (upon request by the athlete in question) is authorized, upon forty-eight (48) hours' notice to the parties concerned, and to the corporation, to hear and decide the matter under such procedures as the AAA deems appropriate, if the AAA determines that it is necessary to expedite such arbitration in order to resolve a matter relating to a competition which is so scheduled that compliance with regular procedures would not be likely to produce a sufficiently early decision by the Association to do justice to the affected parties. By maintaining membership in the corporation, each member agrees that any such aforesaid controversy may be submitted to binding arbitration as provided in this Section and furthermore agrees to be bound by the arbitrators' award as a result thereof.

Section 9.3 In any arbitration brought pursuant to this Article involving selection of an athlete to participate in a protected competition, the athlete submitting the controversy to the AAA must include with the initial submission a list of all persons that the athlete believes may be adversely affected by the arbitration. The member against which the arbitration has been filed must then promptly submit to the AAA a list of the persons it believes may be adversely affected by the arbitration, along with the relevant contact information for the persons identified by the member and by the athlete. The arbitrator then shall promptly determine which additional persons must receive notice of the arbitration. The athlete then shall be responsible for providing appropriate notice to these persons. Any person so notified then shall have the option to participate in the arbitration as a party, however, all persons so notified shall be bound by the results of the arbitration regardless of their decision to participate.

Section 9.4 No claim that has previously been adjudicated by the independent anti-doping organization designated by the corporation to conduct drug testing may be brought with the AAA under this Article.

Section 9.5 Notwithstanding any other provision of this Article, the final decision of a referee during a competition regarding a field of play decision (a matter set forth in the rules of the competition to be within the discretion of the referee) shall not be reviewable by an arbitrator or the subject of a demand for arbitration unless the decision is (1) outside the authority of the referee to make or (2) the product of fraud, corruption, partiality or other misconduct of the referee. For purposes of this Section, the term "referee" shall include any individual with discretion to make field of play decisions.

Section 9.6 Any amateur athlete, who alleges that he/she has been denied (whether or not by a member) an opportunity to compete in any international amateur athletic competition not protected by the terms of Section 9.1 of these Bylaws shall immediately inform the CEO, who will consult with legal counsel to determine whether the situation appears to be of sufficient seriousness and relevance to the obligation or responsibilities of the corporation to warrant action by the corporation in support of the athlete's claim.

Section 9.7 The rights granted to athletes under Sections 9.1 through 9.3 of these Bylaws shall equally apply to any coach, trainer, manager, administrator, or other official seeking to participate in the conduct of any of the international amateur athletic competitions designated, or referred to, in Section 9.1.

Section 9.8 Whenever a complaint is filed with the corporation pursuant to this Article, the CEO shall --

A. promptly notify the Chair of the AAC, the president of the NGB or PSO of the sport involved and the Athlete Ombudsman of the complaint by telephone;
B. provide the Chair of the AAC, the President of the NGB or PSO and the Athlete Ombudsman with a copy of the complaint; and
C. investigate the allegations of the complaint.

Section 9.9 With respect to the complaints filed pursuant to Sections 9.1 and 9.2, the CEO is specifically authorized, in circumstances as he/she may deem appropriate, to authorize legal action by the corporation in support of the athlete, or to finance legal action taken by the athlete (including arbitration) against the corporation member in order to protect the rights of an athlete as specified in Section 9.1. The CEO's decision whether or not to authorize or finance legal action in support of the athlete's claim shall not be construed as an opinion of the corporation with respect to the merits of the athlete's claim.

Section 9.10 With respect to complaints filed pursuant to Section 9.6, the CEO, within forty-eight (48) hours after the filing of the complaint, shall consult with the corporation's General Counsel and determine whether the situation appears to be of sufficient seriousness and relevance to the obligation or responsibilities of the corporation to warrant action by the corporation in support of the athlete's claim. If the CEO determines that action by the corporation appears to be warranted, the matter shall be referred within ninety-six (96) hours of the filing of the complaint to the Board, which shall decide the nature and extent of the action to be taken. In any event, the filing of all complaints under Section 9.3 shall be reported by the CEO to the Board. The report shall contain a brief statement of facts, the status of the investigation (if still ongoing), and any recommendations or final disposition of the matter.

Section 9.11 In determining the nature and extent of the action to be taken pursuant to Sections 9.2 or 9.6 above, the Board may authorize appropriate action, which may include supporting legal actions taken by the athlete against an amateur sports organization that is not a member when it appears that this is the most effective remedy for the protection of the athlete's rights and the athlete so requests.

Section 9.12 No action taken by or on behalf of a complainant under this Article IX shall preclude or act as a bar to the filing of a complaint pursuant to Article VIII of these Bylaws.

ARTICLE X

MEMBERS

Section 10.1 The Board shall have the power to elect properly qualified organizations to membership in each of the categories of membership listed in Sections 10.4 through 10.12 of these Bylaws, to transfer a member organization from one group to another, and to approve continued recognition as a member. The Board also has the power to review all matters relating to the continued recognition of any of the organizations listed in Sections 10.4 through 10.12 of these Bylaws and may take such action as it considers appropriate, including, but not limited to, placing conditions upon the continued recognition of the organization and suspending or terminating such recognition, provided that notice of any such proposed action shall be given to the interested parties prior to the meeting at which such action is to be taken. The Board shall specify the date upon which the rights and duties of new and transferred members shall be come effective. If no date is specified, such rights and duties shall be become effective immediately.

Section 10.2 Membership. The membership of the corporation shall be confined to --

A. organizations of the United States as hereinafter provided in this Article and hereinafter referred to as "Members"; and
B. individuals as hereinafter provided in this Article and hereinafter referred to as "Associate Members". In addition, individuals may be otherwise associated with, and recognized by, the corporation by virtue of their current or past activities in the affairs of the corporation or in the Olympic, Pan American or Paralympic Games as provided elsewhere in these Bylaws.

Section 10.3 Eligibility.

A. Organizations eligible for membership shall be those which take some active part in the administration of one or more sports or competitions on the program of the Olympic, Pan American or Paralympic Games and such other organizations (patriotic, educational, or cultural) that are engaged in efforts to promote the participation in, or preparation for, amateur athletic competition.
B. Organizations which, as a part of their duties, administer participation in, or preparation for, professional sports shall not be ineligible for membership if they also administer a bona fide program of amateur athletic competition.
C. Organizations which are purely commercial or political in character are not eligible for membership.

Section 10.4 Members of the Olympic Assembly. Organizations which meet the requirements for membership as Olympic, Pan American or Pan American Sports Organizations, Community-Based Multisport Organizations, Education-Based Multisport Organizations, Armed Forces Organizations, Affiliated Sport Organizations, or Other Sport Organizations shall be entitled to participate as members of the Olympic Assembly. The list of member organizations of the corporation shall be made available upon request to any member of the corporation.

Section 10.5 Olympic, Paralympic, and Pan American Sport Organizations.

A. Eligibility for membership as Olympic Sport Organizations shall be limited to those amateur sports organizations which are recognized by the corporation as the NGBs for sports which have competed on the program of the Olympic Games. The term "sports which have competed on the program" means sports which have been approved to participate as medal sports at the next Olympic Games. Each Olympic Sport Organization shall be identified with a sport included on the program of the next Olympic Games. In accordance with the IOC's *Olympic Charter*, the corporation shall not recognize more than one (1) NGB in each sport. Olympic Sport Organizations shall be United States members of IFs recognized by the IOC.

B. Eligibility for membership as Pan American Sport Organizations shall be limited to those amateur sports organizations which are recognized by the corporation as the NGBs for sports which have competed on the program of the Pan American Games. Each Pan American Sport Organization shall be identified with a sport included on the program of the next Pan American Games. In accordance with the IOC's *Olympic Charter*, the corporation shall not recognize more than one (1) NGB in each sport. Pan American Sport Organizations shall be United States members of IFs recognized by the IOC. The term "sports which have competed on the program" means sports which competed as medal sports in either of the immediate past two (2) Pan American Games; and which have been:

 1. approved to participate as medal sports in the next Pan American Games,
 2. designated by the organizing committee to compete as medal sports in such Games, and
 3. confirmed by PASO to be on the schedule of the next such Games (confirmed by PASO shall be defined as reported by PASO on a year to year basis). A Pan American Sport Organization that participated in the immediate past Pan American Games is eligible to remain a Pan American Sport Organization until determined that it is not included on the program of the next Games.

C. No amateur sports organization is eligible to be recognized nor is it eligible to continue to be recognized as a NGB unless it complies with Sections 220522 through 220525 of the Act.

D. For any sport which is included on the program of the Paralympic Games, the corporation is authorized to designate, where feasible and when such designation would serve the best interest of the sport, and with the approval of the affected NGB, a NGB recognized under Article X to govern such sport.

Section 10.6 Paralympic Sports Organization. Where designation of a NGB is not feasible or would not serve the best interest of the sport, the corporation is authorized to recognize an amateur sports organization as a PSO. Any such PSO shall comply with the criteria for NGBs applicable to Olympic and Pan American Sport Organization members, and shall perform those duties, and have those powers that the corporation, in its sole discretion, determines are appropriate to meet the objects and purposes of the Act and these Bylaws. Notwithstanding anything to the contrary in Section 10.5 of these Bylaws, a PSO shall not be required to demonstrate that it is autonomous from the corporation. Notwithstanding anything to the contrary in Section 10.5 of these Bylaws a PSO may, with the approval of the corporation, govern more than one sport

included on the program of the Paralympic Games. A PSO shall be a member of each International Sports Organization of the sport or sports it governs.

Section 10.7 Community-Based Multisport Organizations. Eligible for membership as Community-Based Multisport Organizations shall be those amateur sports organizations in the United States which directly or indirectly conduct a national program or regular national amateur athletic competition in two (2) or more sports which are included on the official program of the Olympic, Pan American or Paralympic Games on a level of proficiency appropriate for the selection of amateur athletes to represent the United States in unrestricted international amateur athletic competition and are not Armed Forces or Education-Based Multisport Organizations.

Section 10.8 Education-Based Multisport Organizations. Eligible for membership as Education-Based Multisport Organizations shall be those sports organizations comprised of member educational institutions regularly conducting programs in sports which are included on the program of the Olympic and Pan American Games on a level of proficiency appropriate for the selection of amateur athletes to represent the United States in athletic competition and which base the eligibility of athletes upon enrollment in an educational institution sanctioned by a national accrediting body.

Section 10.9 Armed Forces Organizations. Eligible for membership as Armed Forces Organizations shall be the Army, Navy, Air Force, and Marines.

Section 10.10 Affiliated Sport Organizations. Eligible for membership as Affiliated Sport Organizations shall be those national amateur sports organizations, not eligible to be constituents of Olympic or Pan American Sport Organization members, that function as NGBs in amateur sports which are not on the program for the Olympic or Pan American Games, but which are widely practiced in this and other countries and continents, and whose international sports federations are recognized by the IOC and which comply with each of the following criteria --

A. comply substantially with the criteria for NGBs applicable to Olympic and Pan American Sport Organization members; and
B. have been incorporated as not-for-profit organizations in the United States and been granted tax-exempt status by the Internal Revenue Service; and
C. administer and support an annual national championship of athletes from several different areas/regions of the United States; and
D. have an active athlete training and competition program financially supported by self-generated funds; and
E. participated with a full contingent in two (2) of the last three (3) World Championships as sanctioned by their appropriate IF; and
F. demonstrate that its IF has achieved or is reasonably approaching all requirements defined by the IOC regarding the number of member NOCs for future inclusion, and that the sport meets all IOC requirements regarding rules and regulations for competition in the Olympic Games, and that the IF has made application to the IOC as a sport eligible for future inclusion; and/or
G. demonstrate that its IF has achieved or is reasonably approaching all requirements defined by PASO regarding the number of member NOCs for future inclusion, and that

the sport meets all PASO requirements regarding rules and regulations for competition in the Pan American Games, and that the IF has made application to the PASO as a sport eligible for future inclusion as a medal sport on the competition program of the Pan American Games.

Section 10.11 Other Sport Organizations. Eligible for membership as Other Sport Organizations shall be those national sports organizations not eligible to be recognized in any of the other categories of membership that are recognized by the Board as organizations that should be included in the Olympic Assembly to advance the mission of the corporation. One organization eligible for membership as an Other Sport Organization shall be the United States Olympic Alumni Association.

Section 10.12 Associate Members. Individuals eligible for associate membership shall be those whose financial support of the efforts of the corporation meets such conditions as may be determined by the Board. Associate membership carries with it no voting or other representational rights related to the decisions or activities of the corporation.

Section 10.13 Dues. The Board shall fix the amount of annual dues, if any, for each member organization of the corporation. Such dues shall be fixed on an equitable basis and shall be due and payable on the first day of January each year. A member's failure to pay its dues by the first day of February, or by the date of a regular or special meeting of the Board in that year, whichever is earlier, shall suspend all membership privileges of the delinquent members, including participation in the Olympic Assembly, until all arrearages are paid. Membership shall be terminated automatically if the delinquent member remains in arrears for dues by the first day of February of the next succeeding year.

Section 10.14 General Procedures Applicable to Membership Matters. Except as otherwise expressly provided in these Bylaws, all questions relating to membership in the USOC shall be decided by the Board, after a report by the CEO.

Section 10.15 Organization Applications for Membership; Public Hearings. An amateur sports organization that desires to become a member of the corporation, or which desires to transfer membership from one membership group to another, shall apply in writing to the corporation through the CEO. Applications made under this Section shall be of sufficient detail to demonstrate that the applicant meets the criteria for membership in the group for which application is made. Prior to action by the Board on an application for membership transfer, the CEO shall submit a written report with recommendations to the Board showing the facts that relate to the proposed action. In the case of an application for membership as an Olympic or Pan American Sport Organization, prior to preparing his or her report to the Board, the CEO shall hold at least two (2) public hearings concerning the application for membership. The USOC shall publish on its website, not less than thirty (30) days nor more than sixty (60) days prior to the date of each hearing, a notice of the time, place, and nature of such hearing. The corporation shall send written notice, which shall include a copy of the application, at least thirty (30) days prior to the date of any such public hearing to all amateur sports organizations in that sport that are known to the corporation. At such hearing, the CEO or the CEO's designee shall afford both the applicant organization and any other interested parties an opportunity to comment on the

merits of the application, and the CEO shall summarize in the CEO's report to the Board the comments so received. If the CEO determines, the CEO may (but is not required to) follow the foregoing procedure in the case of applications for membership by other sports organizations that are members of the USOC.

Section 10.16 Notwithstanding the provisions of Section 10.14, the membership of an Olympic, Pan American or Paralympic Sports Organization may be acted upon, by action of the Board, pursuant to the terms of Article VIII of these Bylaws. Notwithstanding the provisions of Section 10.14, in the event that a change in Olympic, Pan American or Paralympic Sports Organization membership occurs pursuant to Article VIII, whether by action of the corporation or by award of AAA arbitration, the provisions of Section 8.18.C of these Bylaws shall apply.

Section 10.17 Any action by the corporation to suspend, revoke, or otherwise deal with the membership of an Olympic, Pan American or Paralympic Sports Organization pursuant to the provisions of Section 220521(d) of the Act and Section 10.1 of these Bylaws shall be taken only at the initiative of the CEO and shall be finally determined by the Board after hearing and report to the Board by the CEO.

A. The initiative for the proposed action shall be in the form of a complaint by the CEO, and the procedures set forth in Sections 10.14 – 10.17 shall apply, except –

 1. that any procedural or jurisdictional objections by the Olympic, Pan American, or Paralympic Sports Organization member shall not be the subject of a separate hearing, and shall be raised by the Olympic, Pan American, or Paralympic Sports Organization member in its answer to the complaint, and
 2. that the hearing of the matter shall be by a hearing panel composed of three (3) to five (5) persons selected by the CEO to hear the matter. The hearing panel shall include at least twenty percent (20%) athletes who have competed as members of United States national teams in the Olympic, Pan American or Paralympic Games, or other major amateur international athletic competition, within the ten (10) years preceding the date when they start serving as a member of the hearing panel.

B. Upon conclusion of its hearing, the CEO or the CEO's hearing panel shall prepare a report for the Board, setting forth its conclusions on any procedural or jurisdictional matter raised by the Olympic, Pan American or Paralympic Games Organization member, and its conclusion on the merits it determines there are no procedural or jurisdictional defects. If the CEO and the CEO's hearing panel find that the complaint is well taken, its report to the Board shall also include a recommendation as to the course of action to be taken by the Board.

C. At its next meeting following the issuance of the report, the Board shall receive the report. No further hearing shall be held by the Board on any procedural or jurisdictional matter decided by the Board or any decision by the Board on its merits. The Board shall consider only whether to accept the recommendation of the CEO as to the action to be taken, if any, against the Olympic, Pan American or Paralympic

Sports Organization member which it believes is appropriate on the basis of the CEO's report.

D. The action of the Board on the matter shall be final.

ARTICLE XI

CODE OF ETHICS FOR VOLUNTEERS, STAFF AND MEMBER ORGANIZATIONS

Section 11.1 Code of Ethics. The Board shall adopt a Code of Ethics for members of the Board, committees, task forces, member organizations associated with the corporation, the CEO, all corporation employees, and others who are associated with the corporation (the "Code"). The Code shall establish minimum standards for the conduct of corporate personnel, including staff. All member organizations shall comply with the requirements of the Code, when representing the corporation or participating in corporation activities or events. Violations of the Code shall be handled in the manner specified in the Code. Amendments to the Code shall require a recommendation of the Ethics Committee and the approval of two-thirds of the voting power of the directors present at a meeting of the Board.

Section 11.2 Affirmative Obligation to Promote Ethical Conduct. All corporation personnel should promote ethical behavior and take steps to ensure that the corporation: (a) encourages employees, Board, committee, and task force members and others associated with the corporation to address ethical concerns, and to talk to supervisors, managers, and the Ethics Officer, when in doubt about the best course of action in a particular situation; (b) encourages everyone associated with the corporation to report, on a confidential basis, violations of laws, rules, regulations or the Code to the Ethics Officer or the Ethics Committee; and (c) informs corporation personnel that the corporation will not allow retaliation for reports made in good faith concerning ethical behavior or the violation of laws, rules, regulations, or the Code.

Section 11.3 Written Standards. The corporation shall develop, maintain, and distribute written standards of conduct, as well as written policies, procedures and protocols, that promote the corporation's commitment to compliance with such standards and address specific areas of potential infractions..

Section 11.4 Compliance Officer. The corporation shall designate an ethics officer at the executive level who shall report functionally to the Ethics Committee and operationally to the CEO and shall be charged with the responsibility for developing, operating, and monitoring the corporation's ethics program, subject to oversight by the Ethics Committee.

Section 11.5 Education and Training. The corporation shall develop and maintain regular and effective education and training programs for all affected corporation employees, officers, directors, committee and task force members, and volunteers, and others associated with the corporation.

Section 11.6 Effective Communication. The corporation shall ensure that an effective line of communication exists between the ethics officer and all corporation employees, officers,

directors, committee members, and volunteers, and others associated with the corporation, including maintaining a process, such as a hotline or other reporting system, to receive complaints and the adoption of procedures to protect the anonymity of complainants and to protect complainants from retaliation based on their reporting of ethics or compliance issues.

Section 11.7 Monitoring. The corporation shall use audits and other risk evaluation techniques to monitor compliance and identify problem areas affecting the corporation and its employees, officers, directors, committee and task force members, and volunteers, and others associated with the corporation.

Section 11.8 Investigation. The corporation shall develop and maintain policies and procedures with respect to the investigation of identified systemic problems, which include direction regarding the prompt and proper response to detected offenses, such as the initiation of appropriate corrective action and preventive matters.

Section 11.9 Reporting Systems. The corporation shall develop and maintain a system to respond to allegations of illegal, unethical, or improper activities and enforcement of appropriate disciplinary action against the corporation's employees, officers, directors, committee and task force members, volunteers, and others associated with the corporation who have violated internal compliance policies, applicable statutes, regulations, or other corporation requirements.

Section 11.10 Member Organizations and Bid Cities. The corporation shall require its member organizations and any bid city organizations to implement procedures that comply with the requirements of Sections 11.3 through 11.9.

ARTICLE XII

ATHLETES' ADVISORY COUNCIL AND ATHLETE REPRESENTATION

Section 12.1 There shall be an AAC composed of, and elected by, amateur athletes to ensure communication between the corporation and currently active athletes, and to serve as a source of opinion and advice to the Board with regard to both current and contemplated policies of the corporation. The AAC shall consist of at least one (1) athlete from each NGB elected by athletes having competed at the appropriate level in the sport governed by that NGB, two (2) athletes elected by athletes having competed at the appropriate level in the sports governed by either PSOs or NGBs designated to govern a Paralympic sport and six (6) athletes elected by the AAC to serve at-large on the AAC. The AAC shall meet regularly and in accordance with the budget approved by the Board. The AAC shall operate in accordance with bylaws adopted by the members of the AAC.

Section 12.2 Election to membership in the AAC shall be made in accordance with provisions of the AAC Bylaws. Elected athletes shall serve until their successors are elected unless removed for cause or not for cause pursuant to the Bylaws of the AAC.

Section 12.3 Athlete representatives shall equal 100% of the AAC, at least 20% of the voting power of the Board of the corporation and at least 20% of the membership and voting power of all corporation committees, task forces and other such groups operating under the authority of the Board or CEO. For purposes of this Section, athlete representatives must have represented the United States in the Olympic, Pan American or Paralympic Games, World Championships, or an event designated as an Operation Gold event within the ten (10) years preceding election.

Section 12.4 Athlete representatives to the AAC (1) representing Olympic and Pan American sports, must be directly elected by athletes from their NGB who meet the standard set forth in Section 12.3 at the time of election, (2) representing Paralympic sports, must be directly elected by athletes from either PSOs or NGBs designated to govern a Paralympic sport who meet the standard set forth in Section 12.3, and (3) who are at-large members of the AAC must be directly elected by athletes serving on the AAC. Athlete representatives to the Board shall be recommended to the Nominating and Governance Committee by members of the AAC from among the athletes who meet the standard set forth in Section 12.3 at the time they would take office, and the Nominating and Governance Committee may also consider other athletes who meet the definition of independence set forth in Section 3.2 of these Bylaws to serve as independent directors on the Board, as provided in these Bylaws. Athlete representatives on corporation committees, task forces and other such groups shall be appointed with the approval of the AAC from among the athletes who meet the standard set forth in Section 12.3.

Section 12.5 Each NGB shall adopt and submit to the corporation, consistent with policies established by the AAC, a procedure whereby eligible athletes as defined in Section 18.7(B) shall elect an active athlete to represent the Olympic or Pan American sport governed by the NGB on the AAC. The PSOs and NGBs designated to govern a Paralympic sport, collectively, shall adopt and submit to the corporation, consistent with policies established by the AAC, a procedure whereby eligible athletes as defined in Section 12.3 above shall elect eligible athletes to represent the Paralympic sports on the AAC. The term for members of the AAC shall commence and shall terminate as provided in the bylaws of the Athletes' Advisory committee.

ARTICLE XIII

NATIONAL GOVERNING BODIES COUNCIL

Section 13.1 There shall be a NGB Council whose members shall be representatives of the NGBs and PSOs selected by their boards of directors or such other governing boards to ensure effective communication between the corporation and such NGBs and PSOs.

Section 13.2 Each member of the NGB Council shall serve until replaced by the NGB or PSO that appointed them, unless removed for cause or not for cause by the NGB Council pursuant to fair procedures as provided for in the NGB Council bylaws.

Section 13.3 The NGB Council shall operate in accordance with bylaws adopted by the members of the NGB Council. The NGB Council shall elect its own officers and shall meet and

conduct business as necessary and in accordance with its bylaws and the budget approved by the Board.

ARTICLE XIV

MULTISPORT ORGANIZATIONS COUNCIL

Section 14.1 There shall be a Multisport Organizations Council whose members shall be one representative of each of the Multisport Organizations (Community-Based Multisport Organizations, Education-Based Multisport Organizations, Armed Forces Organizations, and Affiliated Sport Organizations) selected by their boards of directors or such other governing boards to ensure effective communication between the corporation and such Multisport Organizations.

Section 14.2 Each member of the Multisport Organizations Council shall serve until replaced by the Multisport Organization that appointed them, unless removed for cause or not for cause by the Multisport Organizations Council pursuant to fair procedures as provided for in the Multisport Organizations Council bylaws.

Section 14.3 The Multisport Organizations Council shall operate in accordance with bylaws adopted by the members of the Multisport Organizations Council. The Multisport Organizations Council shall elect its own officers and shall meet and conduct business in accordance with its bylaws.

ARTICLE XV

INDEMNIFICATION

Section 15.1 The corporation shall indemnify each of its present or former directors, officers, employees or official representatives, or any person who is or was serving another corporation or other entity in any capacity at the request of the corporation, against all expenses actually and reasonably incurred by such person (including, but not limited to, judgments, costs and counsel fees) in connection with the defense of any pending or threatened litigation to which such person is, or is threatened to be made, a party because such person is or was serving in such capacity. This right of indemnification shall also apply to expenses of litigation which is compromised or settled, including amounts paid in settlement, if the corporation shall approve such settlement as provided in Section 15.2 of these Bylaws. Such person shall be entitled to be indemnified if he/she acted in good faith and in a manner he/she reasonably believed to be in, and not opposed to, the best interests of the corporation. The termination of any litigation by judgment, order, settlements, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner reasonably believed to be in, and not opposed to, the best interests of the corporation.

Section 15.2 Any amount payable as indemnification under this Article shall be determined and paid by the corporation pursuant to a determination by a majority vote of a quorum

of the Board, consisting of members of the Board who have not incurred expenses in connection with the litigation for which indemnification is sought, that such person seeking indemnification has met the standards of conduct set forth in this Article. If such a quorum is not obtainable, or even if obtainable, a quorum of disinterested directors so directs, such determination shall be made either –

A. by the Board upon the opinion in writing of independent legal counsel that indemnification is proper in the circumstances because the applicable standard of conduct set forth in this Article has been met; or
B. by a majority vote of the members of the Board upon a finding that the person seeking indemnification has met the applicable standard of conduct set forth in this Article.

Section 15.3 Any expenses incurred by such person in connection with the defense of any litigation may be made by the corporation in advance of a final disposition of such litigation upon receipt of an undertaking by such person to repay such amount if it is determined under Section 2 hereof that such person is not entitled to be indemnified under this Article.

Section 15.4 The right of indemnification under this Article shall be in addition to, and not exclusive of, all other rights to which such person may be entitled.

Section 15.5 The Board may, at its discretion, authorize the purchase of insurance on behalf of any persons indemnifiable under this Article. Such insurance may include provisions for indemnification of such persons for expenses of a kind not subject to indemnification under this Article. Any repeal or modification of this Article XV shall be prospective only and shall not adversely affect any right or protection of a director, officer, employee, fiduciary and agent of the corporation under this Article XV, as in effect immediately prior to such repeal or modification, with respect to any liability that would have accrued, but for this Article XV, prior to such repeal or modification.

ARTICLE XVI

ORGANIZATION OF OLYMPIC, PAN AMERICAN AND PARALYMPIC GAMES IN THE UNITED STATES

Section 16.1 The organization of Olympic, Pan American and Paralympic Games is governed by the rules of the IOC, PASO and the IPC. Selection of the host cities for the Olympic Games shall be made in accordance with IOC rules. Selection of the host cities for the Pan American Games shall be made in accordance with special provisions in PASO rules. Selection of the host cities for the Paralympic Games shall be made in accordance with IPC rules.

Section 16.2 Any United States city interested in bidding for the privilege of organizing the Olympic, Pan American or Paralympic Games in the United States shall follow the procedures established by the Board.

ARTICLE XVII

NATIONAL GOVERNING BODIES

Section 17.1 The NGBs and PSOs which are responsible for the technical rules for each sport on the program of the Olympic, Pan American and Paralympic Games shall have the following authority and responsibility –

A. establish an operating procedure within the NGBs or PSOs to insure continuity of international, Olympic, Pan American and Paralympic Games programs for the quadrennial period;
B. establish a written procedure, subject to the approval of the Board, to fairly select athletes, coaches, and team leaders for the Olympic, Pan American and Paralympic Games Teams, that after having been approved by the Board, shall be disseminated as early as possible to the athletes, coaches, and team leaders pursuant to procedures promulgated by the CEO;
C. select site(s) and date(s) to qualify for the Olympic, Pan American and Paralympic Games Teams;
D. nominate for appointment by the Board of the USOC those coaches, team leaders and other team officials for the Olympic, Pan American and Paralympic Games Teams;
E. recommend a plan for training Olympic, Pan American and Paralympic Games Team members;
F. establish a program for the development of its sport;
G. formulate and present budgets for development, team preparation, team selection, and sports liaison expenses;
H. recommend a program for the use of the corporation's Training Centers;
I. screen and recommend athletes for participation in the corporation's Job Opportunities Program;
J. recommend athletes for consideration of awards under the corporation's Medical Scholarship Program;
K. nominate in writing persons for appointment to standing committees of the corporation;
L. prepare the requirements of its sport for submission to the CEO in each of the following areas to service the Olympic, Pan American and Paralympic Teams --

 1. apparel, supplies and equipment;
 2. food and housing;
 3. medical and training services;
 4. tickets; and
 5. transportation;

M. participate in the IF activities of its sport and carry out those responsibilities required by the respective international federations;
N. disseminate to its member athletes information relating to its sport;
O. present to the corporation the organizational structure within the NGB designated to carry out its Olympic, Pan American and Paralympic Games responsibilities;

P. authorize or approve all programs prior to submission by its liaison representatives to the corporation for review and approval; and
Q. adopt and submit to the corporation the procedure whereby it will elect its representative(s) to the Olympic Assembly.

Section 17.2

A. Each NGB or PSO, subject to the policy directives and procedures prescribed by the Board and subject to review by the CEO, shall have the authority and duty to devise and determine the method of selecting athletes and team officials (coaches, team leaders, etc.) who will be recommended to the Board for appointment to the team that will represent the United States in the particular sport or event of the Olympic, Pan American or Paralympic Games.
B. Each NGB or PSO, no less than 18 months prior to each Olympic, Pan American or Paralympic Games, shall submit to the CEO for review and report to the Board, a written proposal concerning the participation of the United States in the particular sport or event of the forthcoming Olympic, Pan American or Paralympic Games. This proposal shall include the number of athletes and team officials to be nominated for appointment to the United States delegation for such Games; the procedures to be followed for preparing and conditioning candidates for the team; the program of tryouts and the method of selecting the athletes to be recommended for appointment to the team; the special requirements of the particular sport or event with respect to sports equipment and supplies, services of physicians and trainers and such special personnel as authorized by the corporation; and any other matters that may be relevant for effective planning of the United States' participation in the particular sport or event of the NGB or PSO. Each NGB or PSO shall be given timely notice with respect to the recommendations for approval, modifications or rejection of specific items in its proposal to be made by the CEO to the Board. If a NGB or PSO is unwilling to accept an adverse recommendation of the CEO, it may appeal in writing to the Board, whose decision by a majority of the voting power of the members present shall be final.
C. Each NGB or PSO shall put into effect the plan approved by the Board for participation of the United States in its particular sport or event in the forthcoming Olympic, Pan American or Paralympic Games. The NGB or PSO, as early as practicable in accordance with the plan, shall announce the method of selecting the athletes to be recommended for appointment to the team, establish the times and places of tryouts thereof, and perform whatever other duties may be indicated under the plan as approved by the Board.
D. Each NGB or PSO, subject to the Bylaws, shall make appropriate contractual or other arrangements for holding such local or regional, preliminary or semifinal tryouts as may be necessary under the plan approved by the Board. Arrangements for final tryouts shall in all cases be cleared specifically with the CEO.
E. Each NGB or PSO, at least twelve (12) months prior to the date of the final tryouts, shall submit for review by the CEO its list of eligible persons (one (1) nominee and one (1) alternate), together with a resume for each authorized position from which it is proposed to select team officials in its particular sport or event to be recommended for appointment by the Board. The CEO, after such investigation and further

consultation with each NGB or PSO as he or she deems appropriate, may recommend approval or rejection of any and all names on such list. In the event a name is recommended for rejection, the NGB or PSO may submit a new nomination, or it may appeal to the Board, whose decision by a majority of the voting power of the members present shall be final.

F. Each NGB or PSO shall cooperate in every way possible with the Board and the CEO in preventing the unauthorized use of the names and trademarks of the corporation, or the word "Olympic" and its derivatives, as well as symbolic equivalents thereof, or the United States Olympic Emblem as described in the Act.

G. As a condition of membership in the corporation and recognition as a NGB or PSO, each NGB or PSO shall comply with the procedures pertaining to drug testing and adjudication of related doping offenses of the independent anti-doping organization designated by the corporation to conduct drug testing. No exceptions to such procedures shall be allowed unless granted by the Board, or its designee, after a hearing at which the NGB or PSO is allowed to present the reasons for such exception.

Section 17.3 Members of NGBs or PSOs or other organizations cooperating with the corporation in raising of funds from any source, shall turn over such funds to the corporation's CEO as promptly as possible. Funds collected over a continuous period of time shall be forwarded to the CEO at least once a month, and in the sixty (60) days prior to the Olympic, Pan American or Paralympic Games at least once a week, with a detailed report indicating sources, amounts, and purposes.

Section 17.4 The CEO shall approve suitable contract forms for the administration of the various Olympic, Pan American or Paralympic Games tryouts and other authorized benefits. Each contract for a tryout shall be made in triplicate and shall specify the types of expenses that may be legitimately charged, the desirable administrative procedures, the minimum guarantee, adequate accounting, and careful fixing of local financial responsibility. Whenever possible, guarantees shall be by security bonds. One (1) copy of each contract shall be filed with the CEO; one (1) copy shall be retained by the NGB or PSO; and one (1) copy shall be retained by the organization sponsoring the tryouts. The NGBs or PSOs shall submit to the CEO, a detailed and certified statement of receipts and disbursements.

Section 17.5 No NGB or PSO shall incur any financial obligation on behalf of the corporation without first obtaining approval from the corporation's Board.

Section 17.6 All funds raised by any NGB or PSO where the word "Olympic" or a derivative thereof is used in any connection shall belong to the corporation and shall be accounted for accordingly.

Section 17.7

A. Athlete representatives shall equal at least 20% of all NGB boards of directors, executive boards, and other governing boards, as well as those committees that are "Designated Committees" within the meaning of these Bylaws. For purposes of these Bylaws, the phrase "Designated Committees" means nominating and budget

committees, panels empowered to resolve grievances and committees which prepare, approve or implement programs in the following areas:

1. expenditures of funds allocated to NGBs by the corporation; and
2. selection of international, Olympic and Pan American Games Team members including athletes, coaches, administrators and sports staff.

If approved by the corporation, NGBs may use proportional or weighted voting to achieve the necessary level of athlete representation in extraordinarily large legislative bodies such as "Houses of Delegates" or "Boards of Governors."

B. Athlete representatives on those NGB boards or committees described in Section 17.7 of these Bylaws above shall meet the following standards:

1. At least one-half of the individuals serving as athlete representatives shall have competed in the NGB's events or disciplines that are on the sport's program in the Olympic or Pan American Games.
2. Up to one-half of the individuals serving as athlete representatives may have competed in (i) an event or discipline not on the program of the Olympic or Pan American Games, provided that such event or discipline is recognized by the IF of the NGB or is regularly included in the international competition program of the IF, or (ii) the Paralympic Games, or an IPC-recognized World Championship in events on the Paralympic Games program.
3. At the time of election, all NGB athlete representatives shall have demonstrated their qualifications as athletes by having:

 a. Within the ten (10) years preceding election, represented the United States in the Olympic or Pan American Games, or an Operation Gold event, or a World Championship recognized by the NGB's IF for which a competitive selection process was administered by the NGB, or, in a team sport, an international championship recognized by the IF of the NGB; or
 b. Within the twenty-four (24) months before election, demonstrated that they are actively engaged in amateur athletic competition by finishing in the top half of the NGB's national championships or team selection competition for the events outlined in subparagraphs (1) or (2) or in a team sport, have been a member of the NGB's national team; or
 c. For the purposes of the standards outlined in Section 17.7.B.2.ii only, within the ten (10) years preceding election, represented the United States in the Paralympic Games, or an IPC-recognized World Championship in events on the Paralympic Games program.
 d. Athlete representatives may not be drawn from events that categorize entrants in age-restricted classifications commonly known as "Juniors," "Masters," "Seniors," "Veterans" or other similarly designated age-restricted competition. This provision is not meant to exclude from eligibility athletes who compete in an event for which the IOC or an IF has established an age restriction but whom otherwise meet the standard set forth in Section 17.7.B.

C. Athlete representatives shall also equal at least 20% of those NGB committees which are not Designated Committees, except that qualification as an "athlete representative" shall be determined as follows:

1. At least one-half of the individuals serving as athlete representatives shall have competed in the NGB's events or disciplines that are on the sport's program in the Olympic or Pan American Games.
2. Up to one-half of the individuals serving as athlete representatives may have competed in (i) an event or discipline not on the program of the Olympic or Pan American Games, provided that such event or discipline is recognized by the IF of the NGB or is regularly included in the international competition program of the IF, or (ii) the Paralympic Games, or an IPC-recognized World Championship in events on the Paralympic Games program.
3. At the time of selection, all NGB athlete representatives under Section 17.7.C shall have demonstrated their qualifications as athletes by having:

 a. Within the ten (10) years preceding selection, represented the United States in the Olympic or Pan American Games, or an Operation Gold event, or a World Championship recognized by the NGB's IF for which a competitive selection process was administered by the NGB, or, in a team sport, an international championship recognized by the IF of the NGB; or the Paralympic Games, or an IPC-recognized World Championship in events on the Paralympic Games program; or
 b. Within the twenty-four (24) months before selection, demonstrated that they are actively engaged in amateur athletic competition; or
 c. For the purposes of the standards outlined in Section 17.7.C.2.ii only, within the ten (10) years preceding selection, represented the United States in the Paralympic Games, or an IPC-recognized World Championship in events on the Paralympic Games program.

4. Athlete representatives may not be drawn from events that categorize entrants in age-restricted classifications commonly known as "Masters," "Seniors," "Veterans" or other similarly designated age-restricted competition. This provision is not meant to exclude from eligibility athletes who compete in an event for which the IOC or IF has established an age restriction but whom otherwise meet the standard set forth in Sections 17.7.B. or 17.7.C of these Bylaws.

D. An NGB may set standards for its athlete representatives that are higher than those in Sections 17.7.B and 17.7.C provided that such standards are not in conflict with the Act or these Bylaws.
E. Athlete representatives to an NGB's board of directors, executive committee, and other such governing boards as defined in Section 17.7.A shall be directly elected by athletes who meet the standards set forth in Section 17.7.B. Athlete Representatives to all other NGB committees and task forces shall be selected by the NGB with the approval of the

athletes, or a representative group of athletes, who meet the standards set forth in Section 17.7.C.

F. Any NGB may submit an Application for Review ("Application") to the CEO. The Application shall set forth: (1) the reasons why the NGB believes it cannot meet the requirements of Section 17.7; and (2) the NGB's proposed alternative plan for compliance with Section 17.7, which should expand on the standards set forth in Sections 17.7.B and 17.7.C only to the extent necessary to achieve the required 20% athlete representation. If the Application is not approved by the CEO, the provisions of this Section 17.7 shall apply. An NGB may appeal the decision of the CEO on the Application to a five-person panel composed of two individuals appointed by the AAC Chair, two appointed by the NGB Council Chair, and one person appointed by the USOC Chair.

ARTICLE XVIII

ELECTION OF MEMBERS TO ATHLETES' ADVISORY COUNCIL

Section 18.1 Each NGB shall adopt and submit to the corporation, consistent with policies established by the AAC, a procedure whereby eligible athletes as defined in Section 12.3 of these Bylaws shall elect an active athlete to represent the Olympic or Pan American sport governed by the NGB on the AAC. The PSOs and NGBs designated to govern a Paralympic sport, collectively, shall adopt and submit to the corporation, consistent with policies established by the AAC, a procedure whereby eligible athletes as defined in Section 12.3 of these Bylaws shall elect active athletes to represent the Paralympic sports on the AAC. (1) The NGB shall forward the name of the elected athlete representing that sport to the CEO of the corporation and certify the date and competition in which the athlete last competed internationally, as set forth in the AAC bylaws. (2) The PSOs and NGBs designated to govern a Paralympic Sport, collectively, shall forward the names of the elected athletes representing the Paralympic sports to the CEO of the corporation and certify the date and competition in which the athlete last competed internationally, as set forth in the AAC Bylaws. The term for members of the AAC shall commence and shall terminate as set forth in the AAC Bylaws.

Section 18.2 As set forth in its AAC Bylaws, the AAC shall elect six (6) active athletes to serve as at-large members of the AAC for the following quadrennial period.

Section 18.3 Each member of the AAC shall serve until replaced by the eligible athletes who elected them, unless removed for cause or not for cause by the AAC pursuant to fair procedures as provided for in the AAC bylaws.

Section 18.4 The AAC shall operate in accordance with bylaws adopted by the members of the AAC. The AAC shall elect its own officers and shall meet and conduct business in

accordance with its bylaws.

ARTICLE XIX

OLYMPIC, PAN AMERICAN, AND PARALYMPIC GAMES-RELATED MATTERS

Section 19.1 Official Delegation.

A. Chef de Mission. The Board shall appoint a Chef de Mission, who shall function as the liaison officer between the Local Organizing Committee for the Olympic, Pan American and Paralympic Games, and the members of the United States official delegation at the site of the Games. The Chef de Mission shall be the liaison officer between the United States official delegation and the Local Organizing Committee at the site of the Olympic, Pan American or Paralympic Games. The Chef de Mission shall present to the Local Organizing Committee all requests, complaints, inquiries, suggestions or information on behalf of the corporation or its officers or committees.

B. Games Administrative Board. There shall be a Games Administrative Board of the corporation which shall have final authority with respect to all matters regarding the United States official delegation at the site of the Games including, but not limited to, policy, protocol, discipline, and similar matters, except with regard to team selection issues and Code of Conduct violations, which shall be determined by the corporation's grievance procedures for the Games. The Games Administrative Board shall consist of the Chair, the CEO, the Delegation Director, the Chef de Mission and the Chair of the AAC. In the case of the absence of a member of the Games Administration Board, the CEO may designate an alternate, who shall exercise all of the privileges of the absent member.

C. The official delegation for any Olympic, Pan American or Paralympic Games shall be limited to athletes and authorized team officials. Only members of the official delegation may wear the official uniform.

D. Members of the Board or the Olympic Assembly or of NGBs or PSOs, and other United States citizens who attend the Games as international officials (other than those included in the preceding paragraph), or members of juries or delegates to congresses of international sports federations or of international sports organizations, or representatives of the press or radio or television, are not members of the official delegation and may not wear the official uniform. They may, however, be provided with a special uniform and/or appropriate insignia selected by the CEO, or his/her designee, to indicate their affiliation with the United States Team and upon acceptance of such uniform, shall be subject to the jurisdiction of the corporation for the duration of the Games.

E. The corporation shall not be under any obligation to make travel arrangements or hotel reservations, or purchase admission tickets to the Olympic, Pan American or Paralympic Games, for persons attending the Games in an official capacity but not included in the official delegation, or for relatives and friends of members of the official delegation, or for the general public. If arrangements with the Local Organizing Committee permit the corporation to render incidental assistance to persons, such as members of the Board or the Olympic Assembly or of NGBs or PSOs, who may be

attending the Games in an official capacity, or to relatives of team members, the CEO, or his/her designee, will make appropriate announcement of the general terms, conditions and limitations under which such assistance may be available to such persons.

F. The corporation shall assume responsibility for transportation, equipment, housing and living expenses of the Olympic, Pan American or Paralympic Games Team from the time the athletes depart for the team processing site until they are officially disbanded on their return to the United States.

G. No contracts or obligations for expenses of any kind shall be made by any members of the official delegation without the authorization of the CEO or his/her designee.

H. Members of the official delegation shall consider the Olympic, Pan American or Paralympic Games dress uniform issued to them as their regular attire from the date of issue continuing until their return to the United States. Certain articles of clothing designated as part of the parade uniforms shall not be worn prior to the parade at the opening ceremonies unless special permission is granted by the CEO, or his/her designee. The CEO, or his/her designee, shall be responsible for establishing policies for the acquisition, transportation, issue, and alteration of all uniforms for the corporation.

I. All members of the official delegation at the Olympic, Pan American or Paralympic Games shall travel to and from the respective Games according to organizational policy, except in those instances where permission to do otherwise shall have been granted by the CEO, or his/her designee.

J. Only the CEO, or his/her designee, may authorize the designation of a commercial tour to the Olympic, Pan American or Paralympic Games as a travel arrangement sponsored or approved by, or cooperating with, the corporation.

K. All athletes and team officials shall be housed together at the Olympic, Pan American or Paralympic Games Village or other quarters provided at the site of the Games, and shall live and eat and remain together until their return to the United States, unless special permission to do otherwise is granted in writing by the Chef de Mission, or his/her designee.

L. Team officials whose teams have completed their competition may be assigned administrative duties in the Athletes' Village by the Chef de Mission, or his/her designee.

M. All personnel attached to the Olympic, Pan American or Paralympic Games Teams shall obtain permission from the CEO, or his/her designee, before entering into any agreements to perform commercial newspaper, magazine, radio or television work on matters relative to Olympic, Pan American or Paralympic Games activities at any time. They shall refer to the CEO, or his/her designee, for clearance on any material concerning Olympic, Pan American or Paralympic Games activity that they may prepare for publication or broadcast delivery.

N. All publicity or public relations functions on behalf of the corporation or the United States Olympic, Pan American or Paralympic Teams preferably shall be performed by or under the direction of the CEO, or his/her designee.

Section 19.2 Tryouts and Team Selection.

A. No athlete shall be recommended for appointment to the United States Olympic, Pan American or Paralympic Games Team unless the athlete has won the right thereto according to the approved method of selection for the particular sport or event, and has passed the required medical examination, and has signed in unaltered form the Code of Conduct acknowledgement agreeing to the terms and conditions contained in the Code of Conduct (which shall include a dispute resolution process) of the United States Olympic, Pan American or Paralympic Games Team.

B. Subject to the Bylaws and approval by the Board, each NGB or PSO may organize tryouts, or by agreement in writing, designate established regional or national championships as Olympic, Pan American or Paralympic Games tryouts for its particular sport or event. All agreements shall comply with the financial regulations in these Bylaws.

C. No competition shall be designated as an Olympic, Pan American or Paralympic Games tryout in a particular sport or event except by specific authority of the appropriate NGB or PSO pursuant to these Bylaws and the Board.

D. All agreements for Olympic, Pan American and Paralympic Games tryouts shall be executed in triplicate by the NGBs and PSOs and the CEO, or his/her designee.

E. Any tryouts organized directly or indirectly under authority of any NGB or PSO shall be open only to athletes who are citizens of the United States at the time of selection and eligible under the rules of the IOC, PASO, or the IPC for selection for membership on the United States Olympic, Pan American or Paralympic Games Team.

F. The entire net income of all tryouts shall be paid to the corporation, unless specific exception is made by the Board on the recommendation of the CEO. When permission is granted by a NGB or PSO to a local, regional, or national organization to conduct tryouts, the said organization shall guarantee the entire expenses thereof. No part of the expenses of the event shall be charged against the corporation or any of its funds.

G. When a NGB or PSO regional or national championship is designated as an Olympic, Pan American or Paralympic Games tryout, the agreement shall specify the method of sharing the proceeds between the organization sponsoring the event and the corporation, and shall be submitted for specific approval of the CEO to the executive officer of the NGB or PSO concerned.

H. When Olympic, Pan American or Paralympic Games tryouts are designated as NGB or PSO championship events, the traditional prizes emblematic of such championships may be awarded. The winners of first, second and third places in any preliminary, regional, semi-final, and final tryout, as well as other events conducted for the benefit of the Olympic fund, may receive appropriate certificates designed for distribution.

I. Each NGB and PSO shall receive from the CEO, or his/her designee, before the final tryouts, measurement forms for team officials and successful competitors and shall complete and return these forms as expeditiously as possible after the final tryout. All athletes and officials who are members of Olympic, Pan American and Paralympic Games Teams during all Games ceremonies, shall wear or use the official uniforms and equipment issued to them by the corporation unless special exception to the Bylaw has been granted by the CEO, or his/her designee, upon a showing by an athlete that the wearing or use of such uniform or equipment will be detrimental to the competitor's performance.

J. A meeting of athletes and officials shall be held by a representative named by the CEO, or his/her designee, to explain to team members their relationship to the corporation, to outline the provisions made for their welfare and comfort, to make clear to them their obligation to the corporation, to sport, and to their country, to review and ensure compliance with the "Delegation Handbook", to obtain signatures of team personnel to releases and agreements, to obtain missing measurements for uniforms, and to obtain required photographs.

K. Once the personnel of the United States Team has been selected on the basis of tryouts, no substitution shall be made except in accordance with selection procedures previously approved by the Board.

Section 19.3 Selected Competitors.

A. Every athlete for the United States Olympic, Pan American or Paralympic Games Team shall be furnished a "Delegation Handbook" containing the basic information and regulations concerning the athlete's responsibilities as a member of the Team and shall:

1. sign, in unaltered form, the Code of Conduct acknowledgement agreeing to the terms and conditions contained in the Code of Conduct (which shall include a dispute resolution process) of the United States Olympic, Pan American or Paralympic Games Team;
2. sign, in unaltered form, the Olympic, Pan American or Paralympic Games Eligibility Code as required by the IOC, PASO or IPC;
3. submit to a medical examination and sign the corporation's Medical Examination form;
4. sign, in unaltered form, the corporation's General Release required of members of the official delegation; and
5. sign a statement granting to the corporation and the appropriate NGB or PSO the right to use the athlete's name, picture and portrait. This statement shall give the corporation and the appropriate NGB or PSO the right to use the athlete's name, picture, and portrait in promoting the competition in which the athlete is to compete or to promote the success of the team on which the individual competed.

B. Upon acceptance as a member of the United States Olympic, Pan American or Paralympic Games Team, the athlete shall --

1. provide the necessary personal information for the official entry, including a certificate (with international license number if applicable) of the athlete's membership in the United States sports governing body affiliated with the IF recognized by the IOC or the IPC as governing the athlete's sport;
2. provide photographs as required for passports, identification cards and office reports; and
3. report to the team processing center with suitable personal gear for the trip.

Section 19.4 Conduct of Team Personnel.

A. All members of the official delegation, and all persons to whom a special uniform has been issued to indicate their affiliation with the United States team, shall be subject to the jurisdiction of the corporation and these Bylaws. They shall conduct themselves at all times and in all places as befits worthy representatives of their country, and in conformity with the traditions of the Olympic, Pan American or Paralympic Games.
B. Competitors shall be under the strict supervision of their team leaders and coaches. They shall maintain strict training while under the supervision of the corporation. They shall also conform to any special training rules set up for their respective teams.
C. Any competitor who uses an unauthorized device or unauthorized equipment, or who uses any prohibited substance or method, shall be subject to disciplinary action in accordance with the protocol applicable to the competition.
D. Any person who participates in the violation of the rule in the preceding paragraph by encouragement or consent communicated to the competitor, or by furnishing any prohibited device, equipment, substance, or method, shall be subject to disciplinary action.
E. Any member of the official delegation who violates the customs, travel or currency regulations of the country where the Olympic, Pan American or Paralympic Games are held, or who assists a stowaway in obtaining unauthorized transportation with the United States Team or in violating the regulations of the Olympic, Pan American or Paralympic Games village, shall be liable for immediate dismissal from the Team.
F. No member of the official delegation or other person subject to the jurisdiction of the corporation shall engage in newspaper, magazine, radio or television work for remuneration during the interval between selection and return of the Team, or shall appear as a guest or participant on radio or television programs for remuneration, without the permission of the CEO, or his/her designee.

Section 19.5 Team Leaders and Coaches.

A. The team leaders shall represent the teams in the various sports of the Olympic, Pan American or Paralympic Games and shall look after the interests and general welfare of the members of their team, including housing, food, transportation, uniforms, laundry and recreation. They shall also enforce the rules of discipline laid down by the corporation.
B. The team leader shall represent the team in all administrative and business affairs between the individual members and the corporation.
C. The coaches shall be primarily responsible for setting up the training program and practice schedule and for advising and coaching the team in the techniques, tactics, and strategy of their competition. No coaching shall be permitted except by coaches officially reviewed by the CEO and approved by the Board.

Section 19.6 Selection of Team Officials.

A. Each NGB or PSO shall have the authority and duty to nominate to the Board the appointment of team officials, as defined by the Local Organizing Committee, for its

particular sport or event in the categories of administrative staff and technical staff. The number of such team officials recommended for appointment shall not exceed the maximum provided in the personnel chart provided to the Board by the CEO.

B. All persons nominated for appointment as team officials shall be carefully chosen with regard for their character, tact, diplomacy, judgment, sense of responsibility, knowledge of their respective sports and other special qualifications. They shall be informed that they cannot receive payment from the corporation for their services.

C. No one shall be nominated for appointment as a team official in the indicated categories who does not agree to devote all necessary time and attention to the performance of designated duties, to travel with the team to and from the Games, and to live during the Games at the place designated by or under authority of the Board.

D. Appointment as a team official may be revoked at any time by the Board or at the Games' site by the Games Administrative Board, if it appears that the official has failed to perform assigned duties satisfactorily.

Section 19.7 Medical Care.

A. Medical care for the official delegation shall be provided exclusively by, or under the supervision of, personnel appointed by the Board as recommended by the CEO. The corporation shall accept no responsibility for the expense of medical care other than that provided or authorized by the official medical staff. Any irregularity or physical ailment or injury suffered by an athlete or team official shall be reported immediately to the team leader and the United States medical headquarters at the Olympic, Pan American or Paralympic Games.

B. The head team physician or physicians shall be responsible for the medical care of all members of the official delegation. Team physicians shall conduct daily sick call, make arrangements for hospital and surgical care as needed, and supervise and coordinate the work of trainers. The decision of the head team physician shall be final in the matter of the return of convalescent athletes to practice and competition. The head team physician shall be responsible for all public announcements of all injuries and illness.

C. The trainers shall be assigned to the various teams by the chief medical coordinator. They shall keep accurate records of all injuries for which they give first aid. They shall refer all cases of injury and illness to the head team physician. When not occupied with the care of injuries and illness, trainers shall act as administrative assistants.

Section 19.8 Relations with National Governing Bodies and Paralympic Sports Organizations.

A. Subject to the general supervision, direction and approval of the Board, each of the Olympic, Pan American or Paralympic Sports Organization members shall have the primary authority and responsibility for selecting and nominating athletes and team officials in its sport for final appointment by the Board to the United States Olympic, Pan American or Paralympic teams. The program of tryouts or other competitions for the selection of athletes, and the plan or method of selecting managers, coaches, and other team officials, and any material modifications thereof, shall be submitted to the CEO for analysis and review, and then for Board approval, before they become

effective. All business arrangements for Olympic tryouts or other Olympic events shall be approved in advance by the CEO.

B. The president of the NGB or PSO, or other persons designated in place thereof, for each sport on the program of the forthcoming Olympic, Pan American or Paralympic Games, shall serve as a liaison with the corporation on the work of the NGB or PSO in the selection and nomination of athletes and team officials, and all other activities related to the Olympic effort. This liaison shall be concerned primarily with coordinating these activities with the CEO and his/her staff.

ARTICLE XX

MISCELLANEOUS

Section 20.1 Subject to approval by the Board, members and administrative officials of former U.S. Olympic Teams may organize separately or jointly in units, chapters or groups for the purpose of promoting the Olympic objectives as defined in the Act and these Bylaws and may use the word "Olympic" in names adopted for and by units, chapters, or groups. The activities of these units, chapters, or groups shall be carried on and subject to the consent and approval of the Board.

Section 20.2 Accounts, Books, Minutes, Etc. The corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its Board and committees. All books and records of the corporation may be inspected by any director, or such director's authorized agent or attorney, for any proper purpose at any reasonable time.

Section 20.3 Fiscal Year. The fiscal year of the corporation shall commence January 1 and end on December 31 each year.

Section 20.4 Conveyances and Encumbrances. The assignment, conveyance or encumbrance or sale, exchange, lease or other disposition of any of the real property of the corporation or all or substantially all of the other property and assets of the corporation shall only be authorized by the Board if the purpose of such assignment, conveyance or encumbrance or sale, exchange, lease or other disposition of any of the real property of the corporation or all or substantially all of the other property and assets of the corporation complies with the purposes and restrictions on the powers of the corporation set forth in the Act and these Bylaws.

Section 20.5 Designated Contributions. The corporation may accept any designated contribution, grant, bequest or devise consistent with its general tax-exempt purposes as set forth in the Act and these Bylaws, and a restricted gifts policy adopted by the Board of the corporation in accordance with paragraph 2.2(e) hereof. The corporation shall acquire and retain sufficient control over all donated funds (including designated contributions) to assure that such funds will be used to carry out the corporation's tax-exempt purposes.

Section 20.6 Loans to Directors and the Chair Prohibited. No loans shall be made by the corporation to the Chair of the Board or any other director or to any USOC committee or task force members. Any Chair, director, committee or task force member, who assents to or

participates in the making of any such loan shall be liable to the corporation for the amount of such loan until it is repaid.

Section 20.7 Amendments. These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by a majority vote of the Board taken at and noticed for an appropriately called Board meeting. Amendments shall take effect at the close of such meeting except in such cases where it may be specified in the resolution approving the amendment that the amendment will take effect during the meeting or at a later time. Amendments may only be submitted by members of the Board or by the chair of a Board committee. All proposed amendments must be postmarked to the CEO in writing at least ninety (90) days before a meeting of the Board. Not later than sixty (60) days before the date of any meeting of the Board at which amendments are to be considered, a general notice of the proposed alteration shall be published on the corporation's website and sent to the chairs of the AAC, the NGB Council, and the Multisport Organizations Council, setting forth the text or substantive terms of the proposed amendments, the time and place of the Board's meeting at which such amendments are to be voted upon, and a provision informing interested persons that they may submit materials for consideration by the Board at such meeting by delivering to the CEO, not less than ten (10) days before the meeting, written data, views or arguments concerning the proposed amendments. At the discretion of the CEO, an interested person may be invited to make any additional written or oral presentation for consideration at the meeting, and all persons who submit material under this Section shall be mailed a copy of any amendment that may be adopted at the meeting. All proposed amendments shall be mailed by the CEO to each member of the Board. These proposed amendments along with any data, views, or arguments previously submitted by the public shall be distributed to the Board not later than thirty (30) days before the date of the meeting. Except for such proposed amendments that are so sent out, no other amendment shall be considered, nor shall any proposed amendment to an amendment as proposed be considered, unless the same merely goes to the form and not to the substance thereof. Nevertheless, if more than one (1) amendment has been proposed on the same subject matter, and there are substantive differences between such amendments, the Board may, after due consideration of such proposals, adopt a compromise of substance as well as form; and, if the adoption of an amendment as proposed or amended or compromised is inconsistent or in conflict with other parts of the Bylaws, the meeting may adopt conforming amendments appropriate to the case.

Section 20.8 Severability and Headings. The invalidity of any provision of these Bylaws shall not affect the other provisions hereof, and in such event these Bylaws shall be construed in all respects as if such invalid provision were omitted. The descriptive headings of Articles and Sections used in these Bylaws are inserted for convenience only and are not intended to and do not have any operative effect.

Section 20.9 Irrevocable Dedication and Dissolution. The property of the corporation is irrevocably dedicated to charitable purposes, and no part of the net income or assets of the corporation shall inure to the benefit of private persons. Upon the dissolution or winding up of the corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation, shall be distributed to a nonprofit fund, foundation, or corporation which is organized and operated for charitable purposes and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code, as amended. The use and disposition on

dissolution or winding up of real or personal property owned or used by the corporation in any and all States and Territories which are part of the United States of America shall be limited to the purposes stated in the foregoing paragraph in such a manner as to satisfy the requirements of the laws of such States for exemption of such property from property taxation in such States.

Section 20.10 Saving Clause. Failure of literal or complete compliance with any provision of these Bylaws in respect of dates and times of notice, or the sending or receipt of the same, or errors in phraseology of notice of proposals, which in the judgment of the members at meetings held do not cause substantial injury to the rights of members, shall not invalidate the actions or proceedings of the members at any meeting.

Section 20.11 Individual Liability. No individual officer, director or member of a committee of the corporation shall be personally liable in respect of any debt or other obligation incurred in the name of the corporation or any of its committees pursuant to authority granted directly or indirectly by the Board.

The undersigned, being an officer of the United States Olympic Committee, hereby indicates that the Board has adopted the foregoing Bylaws as the Bylaws of such corporation on June 23, 2006.

Peter V. Ueberroth

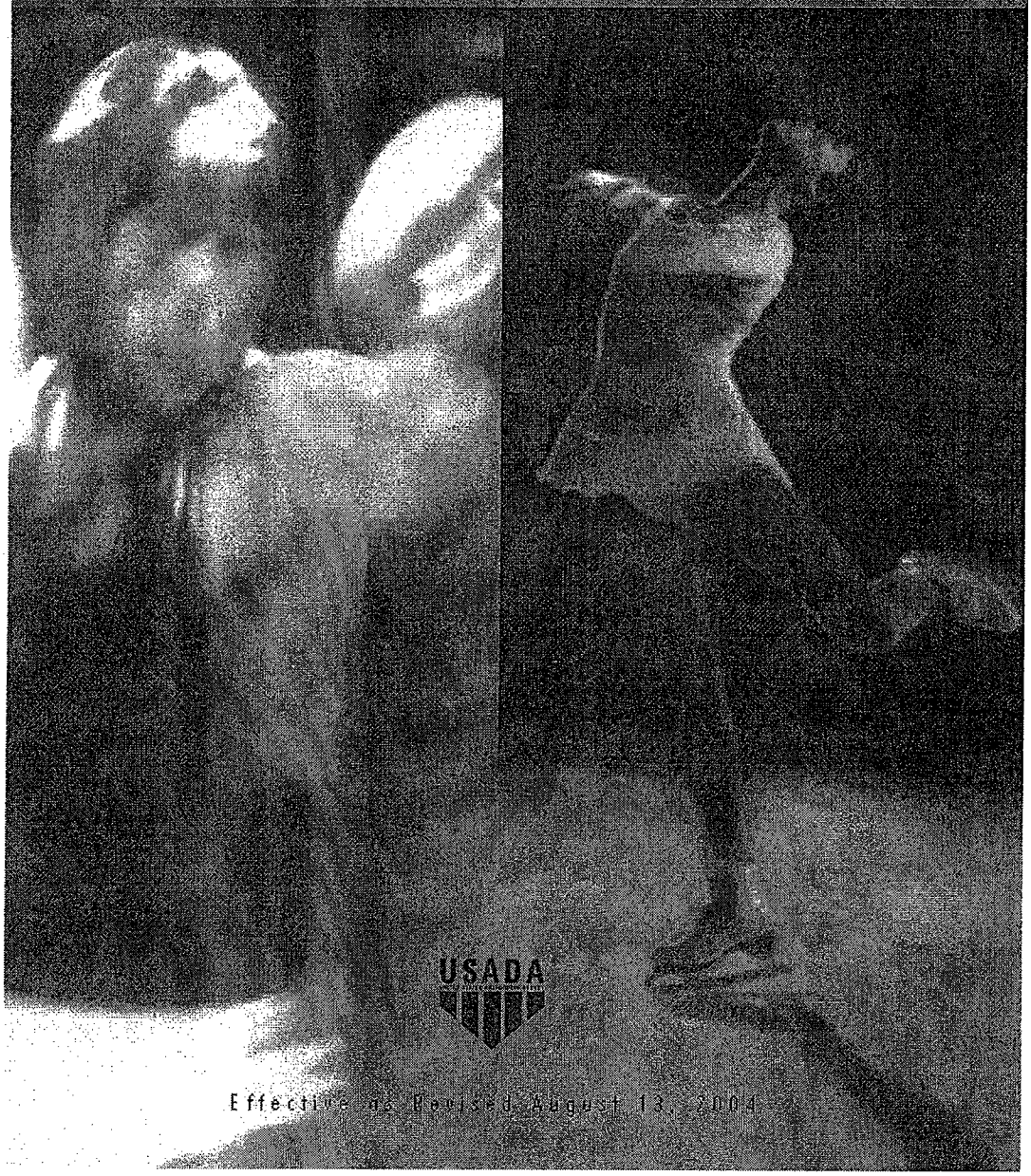
Peter V. Ueberroth
USOC Chair

June 26, 2006
Date

TAB 3

United States Anti-Doping Agency

PROTOCOL FOR OLYMPIC MOVEMENT TESTING



USADA

Effective as Revised August 13, 2004

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USADA MISSION

USADA is dedicated to preserving the well-being of Olympic sport, the integrity of competition, and ensuring the health of athletes.

HOW TO CONTACT USADA

United States Anti-Doping Agency (USADA)
2550 Tenderfoot Hill St., Suite 200
Colorado Springs, CO 80906

Phone: (719) 785-2000
Fax: (719) 785-2001
Toll-Free Phone: (866) 601-2632
E-mail: usada@usantidoping.org
Web site: www.usantidoping.org

USADA DRUG REFERENCE LINE

For information and clarification on the status of specific U.S. pharmaceutical products and over-the-counter medicinal products, please contact USADA's Drug Reference Line at

Toll-Free Phone: (800) 233-0393 (inside the U.S.)
Phone: (719) 785-2020 (outside the U.S.)
E-mail: drugreference@usantidoping.org

PLAY CLEAN LINE

The Play Clean line at 877-PLAY CLEAN [877-752-9253] is a direct link for individuals who are interested in drug-free competition. Please call USADA when you believe the integrity of your sport is being compromised by doping.

The USOC Anti-Doping Policies can be found in the education section of the official Web site of the USOC (http://www.usolympicteam.com).

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UNITED STATES ANTI-DOPING AGENCY
PROTOCOL FOR OLYMPIC MOVEMENT TESTING
(effective as revised August 13, 2004)

1. **USADA's Relationship with the United States Olympic Committee ("USOC")**

USADA is an independent legal entity not subject to the control of the USOC. The USOC has contracted with USADA to conduct drug testing, manage test results and adjudicate disputes for participants in the Olympic movement within the United States and to provide educational information to those participants. For purposes of transmittal of information by USADA, the USOC is USADA's client. However, the USOC has authorized USADA to transmit information simultaneously to the relevant National Governing Body ("NGB"), International Federation ("IF") the World Anti-Doping Agency ("WADA") and involved athlete or other person.

2. **Athletes Subject to Testing by USADA**

The USOC, NGBs and the World Anti-Doping Code (the "WADA Code") have authorized USADA to test the following athletes:

a. Any athlete who is a member of a NGB;

b. Any athlete participating at a competition sanctioned by the USOC or a NGB;

c. Any foreign athlete who is present in the United States; or

d. Any other athlete who has given his/her consent to testing by USADA or who has submitted an out-of-competition testing location form to USADA or an IF within the previous twelve months and has not given his or her NGB and USADA written notice of retirement;

e. Any athlete who has been named by the USOC or an NGB to an international team or who is included in the USADA Registered Testing Pool or is competing in a qualifying event to represent the USOC or NGB in international competition;

f. Any United States athlete or foreign athlete present in the United States who is serving a period of ineligibility on account of an anti-doping rule violation and who has not given prior written notice of retirement from all sanctioned competition to the applicable NGB and USADA, or the applicable foreign anti-doping agency or foreign sport association.

USADA will not allow the testing process to be used to harass any athlete. In selecting athletes for testing, USADA will focus primarily on athletes who are participating, or have the potential to participate, in international competition.

3. **Choice of Rules**

In conducting drug testing and results management under this Protocol for Olympic Movement Testing (the "Protocol"), USADA will be bound by the following rules:

a. Those Articles of the WADA Code which must be incorporated into the rules of every Anti-Doping Organization and are set forth in Annex A. Annex A is incorporated by reference into this Protocol.

b. The selection and collection procedures set forth in paragraphs 4, 5 & 6 herein shall apply to all testing conducted by USADA unless different procedures are agreed to between USADA and the party requesting the test for a particular event.

c. All tests performed by USADA shall be analyzed in WADA accredited laboratories or as otherwise approved by WADA. In analyzing samples for USADA, those laboratories shall follow the established WADA International Standard for Laboratory Analysis.

d. Samples tested by USADA shall be analyzed for the substances and methods included on the WADA Prohibited List or in the WADA Monitoring Program.

e. USADA shall be responsible for results management of the following: 1) tests initiated by USADA, unless otherwise referred by USADA to a foreign sports organization having jurisdiction over the athlete or other person, 2) all other tests for which the applicable IF rules require the initial adjudication to be done by a domestic body, and 3) other potential violations of Annex A, IF or USOC Anti-Doping Policies ("USOC ADP") involving any athlete described in paragraph 2, their support personnel and other NGB members, unless otherwise referred by USADA to a foreign sports organization having jurisdiction over the athlete or other person. Where, pursuant to an agreement, USADA executes tests initiated by an IF, regional or continental sports organization or other Olympic movement sporting body, other than the USOC or a NGB, then results management shall be governed by the rules of that sporting body.

f. Any IF or NGB procedural rule inconsistent with this Protocol shall be superceded by this Protocol.

g. The USOC has adopted the USOC ADP which affect athletes' or other persons' eligibility for USOC teams and benefits.

4. **Selection of Athletes to be Tested In-Competition**

USADA shall have the authority to determine which athletes will be selected for testing in all competitions tested by USADA. In making this determination, USADA will follow NGB or IF selection procedures when available and will include at a minimum the selection formulas or requests for target selection of particular athletes which are proposed by the USOC or a particular NGB or IF. Notwithstanding the foregoing sentence, USADA retains the right to test any athlete subject to testing as provided in paragraph 2 that it chooses with or without cause or explanation.

5. **Selection of Athletes to be Tested Out-of-Competition**

USADA shall have the authority to determine which athletes will be selected for out-of-competition testing by USADA. In making this determination, USADA will carefully consider selection formulas or requests for target selection of particular athletes which are proposed by the USOC or a particular NGB. USADA retains the right to test any athlete subject to testing as provided in paragraph 2 that it chooses,with or without cause or explanation. USADA will not allow the testing process to be used to harass any athlete.

Each NGB will provide USADA with an updated list of athletes at least quarterly, unless otherwise agreed by USADA, to be included in the USADA Registered Testing Pool. With respect to each athlete on such list and such additional athletes as may be designated by USADA for inclusion in the USADA Registered Testing Pool, the NGB will provide USADA with the initial information as set forth on the athlete location form attached as Annex B. Thereafter it shall be the responsibility of each individual athlete to forward to USADA his or her athlete location forms and to provide USADA with updated information specifying his or her whereabouts.

USADA shall maintain on its website, a list of all athletes or other persons in the USADA Registered Testing Pool and all athletes tested by USADA. The list shall include the number of times each athlete has been tested by USADA.

6. **Sample Collection**

Sample collection by USADA, and third parties authorized by USADA to collect samples for USADA including other national anti-doping agencies pursuant to bilateral or multilateral agreements, will conform to the standards set forth in the International Standard for Testing.

7. **Laboratory Analysis**

All samples collected by USADA shall be analyzed only in WADA-accredited laboratories or as otherwise approved by WADA.

a. Sample analytical results should normally be reported by the Laboratory to USADA within ten (10) working days of the laboratory's receipt of the sample. In no event shall the reporting period exceed three months.

b. The laboratory may retest previously reported samples under the following conditions:

i. The retesting is either directed or authorized by USADA pursuant to guidelines developed by USADA for the retesting of samples.

ii. Until such time as WADA has developed International Standards applicable to retesting of samples, the laboratory shall have the burden of establishing that any adverse analytical finding was not the result of changes to the sample during storage and that the chain of custody for the sample from the original analysis through retesting remained intact.

Upon receipt of a laboratory analytical report from the retesting of a sample, USADA shall follow the regular procedures applicable to USADA's receipt of all other analytical reports.

8. **Notification**

USADA will provide the following notification with respect to each specimen collected or attempted to be collected by USADA:

a. Upon receipt of a negative laboratory report, USADA will promptly forward that result to the athlete at the address on the Athlete Location Form on file or if no form is on file to the address on the Doping Control Notification/Signature Form, the USOC and the applicable NGB.

b. Upon receipt of a positive laboratory A report or a report indicating an elevated testosterone to epitestosterone ratio or epitestosterone concentration, USADA will promptly notify the USOC, the applicable NGB, and the athlete at the address on the Athlete Location Form on file, or if no form is on file to the address on the Doping Control Notification/Signature Form and shall advise the athlete of the date on which the laboratory will conduct the B sample analysis. The athlete may attend the B sample analysis accompanied by a representative, or may have a representative appear on his or her behalf, at the expense of the athlete. Prior to the B sample opening, USADA shall provide to the athlete the A sample laboratory documentation as set forth on Annex C, a copy of the Protocol and a copy of the World Code. A sample shall not be considered positive until after the B sample analysis confirms the A sample analysis or the athlete has expressly waived the B sample analysis. In any correspondence offering the athlete the opportunity to waive testing the B Sample, USADA shall include the language set forth in Annex G.

c. Upon receipt of the laboratory's B sample report, USADA shall promptly notify the athlete, the USOC, and the applicable NGB. USADA shall then provide to the athlete the B sample documentation package set forth on Annex D. The laboratory shall not be required to produce any documentation in addition to Annexes C and D unless ordered to do so by an arbitrator(s) during adjudication, in which case it shall be produced at the athlete's expense unless ordered otherwise by an arbitrator(s).

d. In special circumstances where USADA is conducting testing for an IF, regional or continental sports organization or other Olympic movement sporting body, other than the USOC or an NGB, the notification described in this section shall be made as provided in the agreement between USADA and that sporting body or as required by WADA.

e. If USADA determines that an athlete or other person may have committed an anti-doping rule violation as described in Annex A other than a positive test or other violation of IF rules or the USOC ADP, then at such time as USADA initiates the Anti-Doping Review Board process, USADA shall provide notice of such potential violation to the athlete or other person, the USOC and the applicable NGB.

f. Notice to an athlete or other person, for all purposes of this Protocol except for notice of negative laboratory reports, shall be effective when delivered by overnight courier to the athlete's or other person's most recent address on file with USADA. If USADA is not able to deliver the notice at such address, then USADA shall contact the NGB and send notice by overnight courier to the athlete's or other person's most recent address on file with the NGB if that is a different address than the most recent address on file with USADA. If the athlete's or other person's most recent address on file with USADA and the NGB is the same, or if USADA is unable to obtain delivery at the athlete's or other person's most recent address on file with the NGB, then notice to the athlete or other person shall be effective upon the courier's last attempt to deliver.

g. At such time as WADA has implemented the Doping Control Information Clearinghouse described in Article 14.5 of the World Code, USADA will report to WADA the athlete whereabouts and testing information described in Articles 14.3 and 14.5 of the WADA Code.

9. **Results Management / Anti-Doping Review Board**

When USADA receives a laboratory report confirming an adverse analytical finding, or when USADA has otherwise determined that an anti-doping rule violation may have occurred, such as admitted doping, refusal to test, trafficking or other violation of Annex A, IF rules or the USOC ADP, then USADA shall address that case through the following results management procedures:

a. The USADA Anti-Doping Review Board ("Review Board") shall be comprised of experts independent of USADA with medical, technical and legal knowledge of anti-doping matters. The Review Board members shall be appointed for two-year terms by the USADA Board of Directors. The Review Board shall review all sample test results reported by the laboratory as analytically positive or elevated in accordance with section 9(c)(i) below. Such review shall be undertaken by between three and five Review Board members appointed in each case by USADA's Chief Executive Officer and composed of at least one technical, one medical and one legal expert.

b. The Review Board shall also review all potential anti-doping rule violations, including violations of Annex A, IF rules or the USOC ADP, not based on adverse analytical findings, which are brought forward by USADA. Review of potential violations other than adverse analytical findings shall be undertaken by three Review Board members appointed in each case by USADA's Chief Executive Officer.

c. Upon USADA's receipt of a laboratory B sample report confirming an adverse analytical finding (or test result of the A sample when analysis of the B sample has been expressly waived by the athlete or other person), or when USADA determines that a potential violation of other applicable anti-doping rules has occurred, the following steps shall be taken:

i. USADA's Chief Executive Officer shall appoint a Review Board as provided in Section 9(a) or 9(b) above.

ii. The Review Board shall be provided the laboratory documentation and any additional information which USADA deems appropriate. Copies of this information shall be provided simultaneously to the athlete or other person and the athlete or other person shall be entitled to file a response with the Review Board. The athlete's or other person's name will not be provided to the Review Board by USADA and will be redacted from any documents submitted to the Review Board by USADA.

iii. The athlete or other person shall be promptly notified that within ten (10) days of the date of notice he or she may submit to the Review Board, through USADA, any written materials for the Review Board's consideration. The athlete or other person shall also be provided the name, telephone number, email address and website URL of the Athlete Ombudsman.

iv. The Review Board shall be entitled to request additional information from either USADA or the athlete or other person.

v. Notwithstanding the forgoing, the process before the Review Board shall not be considered a "hearing." The Review Board shall only consider written submittals. Submittals to the Review Board shall not be used in any further hearing or proceeding without the consent of the party making the submittal. No evidence concerning the proceeding before the Review Board, including but not limited to the composition of the Review Board, what evidence may or may have not been considered by it, its deliberative process or its recommendations shall be admissible in any further hearing or proceeding.

vi. The Review Board shall consider the written information submitted to it and shall, by majority vote, make a signed, written recommendation to USADA with a copy to the athlete or other person whether or not there is sufficient evidence of doping to proceed with the adjudication process.

vii. USADA shall also forward the Review Board's recommendation to the USOC, the applicable NGB and IF and WADA.

10. **Results Management / Adjudication**

a. Following receipt of the Review Board recommendation, USADA shall notify the athlete or other person in writing whether USADA considers the matter closed or alternatively what specific charges or alleged violations will be adjudicated and what sanction, consistent with Annex A, IF rules or the USOC ADP, USADA is seeking to have imposed. The notice shall also include a copy of the Protocol and the American Arbitration Association Supplementary Procedures for Adjudication of Doping Disputes (the "Supplementary Procedures") attached as Annex E. Within ten (10) days following the date of such notice, the athlete or other person must notify USADA in writing if he or she desires a hearing to contest the sanction sought by USADA. The athlete or other person shall be entitled to a five (5) day extension if requested within such ten (10) day period. If the sanction is not contested in writing within such ten (10) or fifteen (15) day period, then the sanction shall be communicated by USADA to the athlete or other person, USOC, the applicable NGB and IF and WADA and thereafter imposed by the NGB. Such sanction shall not be reopened or be subject to appeal unless the athlete or other person can demonstrate by a preponderance of the evidence in a subsequent appeal to CAS that he or she did not receive either actual or constructive notice of the opportunity to contest the sanction. The athlete or other person may also elect to avoid the necessity for hearing by accepting the sanction proposed by USADA. If the sanction is contested by the athlete or other person, then a hearing shall be conducted pursuant to the procedure set forth below.

b. The hearing will take place in the United States before the American Arbitration Association ("AAA") using the Supplementary Procedures. The parties will be USADA and the athlete or other person. USADA shall also invite the applicable IF and WADA to participate either as a party or as an observer. The athlete or other person shall have the sole right to request that the hearing be open to the public subject to such limitations as may be imposed by the arbitrator(s). For their information only, notice of the hearing date shall also be sent to the USOC, the Athlete Ombudsman and the applicable NGB. If the athlete or other person requests, the Athlete Ombudsman shall be invited as an observer.

c. The final decision by the AAA/CAS arbitrator(s) may be appealed to the Court of Arbitration for Sport ("CAS") as set forth in Article 13 of Annex A. The appeal procedure set forth in Article 13 of Annex A shall apply to all appeals not just appeals by International-Level athletes or other persons. A CAS appeal shall be filed with the CAS Administrator, the CAS hearing will automatically take place in the U.S. and CAS shall conduct a de novo review of the matter on appeal which, among other things, shall specifically include the power to increase, decrease or void the sanctions imposed by the previous AAA/CAS Panel. Otherwise the regular CAS appellate rules apply. The decision of CAS shall be final and binding on all parties and shall not be subject to further review or appeal.

d. In all hearings conducted pursuant to the Protocol, the requirements set forth in the WADA Code shall apply. If no WADA Code requirement is applicable, then, subject to paragraph 3(f), the IF anti-doping rules, the USOC ADP and the Protocol shall apply.

e. All administrative costs of USADA relating to the testing and management of athletes' samples will be borne by USADA. Administrative costs of the USADA adjudication process (AAA filing fee, AAA administrative costs, AAA arbitrator fees and costs) will be borne by the USOC.

f. If the athlete or other person files an appeal with CAS, the CAS appeal fee will be paid by the athlete or other person and refunded to the athlete by the USOC should the athlete prevail on appeal.

g. The results of all hearings, including written decisions, shall be communicated by USADA to the athlete or other person, the USOC, the applicable NGB and IF and WADA. The NGB and/or USOC shall impose any sanction resulting from the adjudication process. The NGB and/or the USOC shall not impose any sanctions until after the athlete or other person has had the opportunity for a hearing pursuant to section 10(b).

11. Ownership and Use of Samples

All samples collected by USADA shall be the property of USADA, but shall only be used for purposes outlined in this Protocol. Samples collected after August 13, 2004 shall not be used for research without the Athlete's written consent. Samples collected prior to August 13, 2004 shall not be used for research unless all markings on the sample which identify the sample as coming from a particular athlete are obliterated.

12. Confidentiality

USADA shall not publicly disclose or comment on any athlete's positive test result or any information related to any alleged doping violation (including violations not involving adverse analytical finding) until after the athlete or other person 1) has been found to have committed an anti-doping rule violation in a hearing conducted under either article 10(b) above, or 2) has failed to request a hearing within the time set forth in 10(a), or 3) has agreed in writing to the sanction sought by USADA. However, USADA may provide notification to the USOC, NGB, IF and WADA (or other sporting body ordering the test) as provided for in this Protocol. USADA does not control how information provided by USADA to the USOC, NGBs, IFs and WADA is disseminated but will include statements to each organization requesting that any organization receiving such information keep it confidential until disclosed by USADA. USADA may comment publicly on any aspect of the results management/adjudication process or the applicable rules without making specific reference to any athlete or other person alleged to have committed an anti-doping rule violation. USADA may also release aggregate statistics of testing and adjudication results.

USADA shall publicly report the disposition of anti-doping matters no later than five (5) business days after: 1) it has been determined in a hearing in accordance with the Protocol that an anti-doping rule violation has occurred, 2) such hearing has been waived, 3) the assertion of an anti-doping rule violation has not been timely challenged, or 4) the athlete or other person has agreed in writing to the sanction sought by USADA. In all cases, the disposition shall be reported to the USOC, NGB, IF, WADA and, if applicable, the other sporting body referring the matter to USADA.

13. **Expedited Procedures**
USADA may shorten any time period set forth in these procedures where doing so is reasonably necessary to resolve an athlete's or other person's eligibility before a protected competition. The shortened time periods shall continue to protect the right of the athlete or other person to a fair hearing and shall not prohibit the athlete's or other person's right to request three (3) arbitrators or choose a neutral arbitrator.

14 **Retirement**
The notice regarding retirement attached as Annex H shall be posted on the USADA website and included in the initial packet of information provided to athletes in the Registered Testing Pool. Such notice will automatically be included by USADA with any notice to an athlete of a second missed test.

15. **Effective Date**
The revisions to this Protocol incorporated herein shall go into effect on August 13, 2004. Revisions to the Protocol as previously published shall not apply retrospectively to matters pending before August 13, 2004.

ANNEX A

Articles from the World Anti-Doping Code that are Incorporated Verbatim into the USOC Anti-Doping Policies and the USADA Protocol for Olympic Movement Testing

ARTICLE 1: DEFINITION OF DOPING

Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in Article 2.1 through Article 2.8 of the *Code*.

ARTICLE 2: ANTI-DOPING RULE VIOLATIONS

The following constitute anti-doping rule violations:

2.1 The presence of a Prohibited Substance or its *Metabolites* or *Markers* in an *Athlete's* bodily Specimen.

2.1.1 It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body. Athletes are responsible for any *Prohibited Substance* or its *Metabolites or Markers* found to be present in their bodily *Specimens*. Accordingly, it is not necessary that intent, fault, negligence or knowing *Use* on the *Athlete's* part be demonstrated in order to establish an anti-doping violation under Article 2.1.

2.1.2 Excepting those substances for which a quantitative reporting threshold is specifically identified in the *Prohibited List*, the detected presence of any quantity of a *Prohibited Substance* or its *Metabolites or Markers* in an *Athlete's Sample* shall constitute an anti-doping rule violation.

2.1.3 As an exception to the general rule of Article 2.1, the *Prohibited List* may establish special criteria for the evaluation of *Prohibited Substances* that can also be produced endogenously.

2.2 *Use or Attempted Use* of a *Prohibited Substance* or a *Prohibited Method.*

2.2.1 The success or failure of the *Use of a Prohibited Substance* or *Prohibited Method* is not material. It is sufficient that the *Prohibited Substance* or *Prohibited Method* was *Used or Attempted to be Used* for an anti-doping rule violation to be committed.

2.3 Refusing, or failing without compelling justification, to submit to *Sample* collection after notification as authorized in applicable anti-doping rules or otherwise evading *Sample* collection.

2.4 Violation of applicable requirements regarding *Athlete* availability for *Out-of-Competition Testing* including failure to provide required where abouts information and missed tests which are declared based on reasonable rules.

2.5 *Tampering*, or *Attempting to tamper*, with any part of *Doping Control.*

2.6 *Possession* of *Prohibited Substances* and *Methods*:

2.6.1 *Possession* by an *Athlete* at any time or place of a substance that is prohibited in *Out-of-Competition Testing* or a *Prohibited Method* unless the *Athlete* establishes that the *Possession* is pursuant to a therapeutic use exemption granted in accordance with Article 4.4 (*Therapeutic Use*) or other acceptable justification.

2.6.2 *Possession* of a substance that is prohibited in *Out-of-Competition Testing* or a *Prohibited Method* by *Athlete Support Personnel* in connection with an *Athlete*, *Competition* or training, unless the *Athlete Support Personnel* establishes that the Possession is pursuant to a therapeutic use exemption granted to an *Athlete* in accordance with Article 4.4 (Therapeutic Use) or other acceptable justification.

2.7 *Trafficking* in any *Prohibited Substance* or *Prohibited Method.*

2.8 Administration or *Attempted* administration of a *Prohibited Substance* or *Prohibited Method* to any *Athlete*, or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any *Attempted* violation.

ARTICLE 3: PROOF OF DOPING

3.1 Burdens and Standards of Proof.

The *Anti-Doping Organization* shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the *Anti-Doping Organization* has established an anti-doping rule violation to the comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where the *Code* places the burden of proof upon the *Athlete* or other *Person* alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

3.2 Methods of Establishing Facts and Presumptions.

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

3.2.1 *WADA*-accredited laboratories are presumed to have conducted *Sample* analysis and custodial procedures in accordance with the *International Standard* for laboratory analysis. The *Athlete* may rebut this presumption by establishing that a departure from the International Standard occurred.

If the Athlete rebuts the preceding presumption by showing that a departure from the *International Standard* occurred, then the *Anti-Doping Organization* shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding.*

3.2.2 Departures from the *International Standard* for *Testing* which did not cause an *Adverse Analytical Finding* or other anti-doping rule violation shall not invalidate such results. If the *Athlete* establishes that departures from the *International Standard* occurred during Testing then the *Anti-Doping Organization* shall have the burden to establish that such departures did not cause the *Adverse Analytical Finding* or the factual basis for the anti-doping rule violation.

ARTICLE 9: AUTOMATIC DISQUALIFICATION OF INDIVIDUAL RESULTS

An anti-doping rule violation in connection with an *In-Competition* test automatically leads to *Disqualification* of the individual result obtained in that *Competition* with all resulting consequences, including forfeiture of any medals, points and prizes.

ARTICLE 10: SANCTIONS ON INDIVIDUALS

10.1 *Disqualification* of Results in *Event* During which an Anti-Doping Rule Violation Occurs

An anti-doping rule violation occurring during or in connection with an *Event* may, upon the decision of the ruling body of the *Event*, lead to *Disqualification* of all of the *Athletes* individual results obtained in that Event with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.

10.1.1 If the *Athlete* establishes that he or she bears *No Fault* or *Negligence* for the violation, the *Athlete's* individual results in the other *Competitions* shall not be *Disqualified* unless the *Athlete's* results in *Competitions* other than the *Competition* in which the anti-doping rule violation occurred were likely to have been affected by the *Athlete's* anti-doping rule violation.

10.2 Imposition of *Ineligibility* for *Prohibited Substances* and *Prohibited Methods*

Except for the specified substances identified in Article 10.3, the period of *Ineligibility* imposed for a violation of Articles 2.1 (presence of *Prohibited Substance* or its *Metabolites* or *Markers*), 2.2 (*Use or Attempted Use of Prohibited Substance or Prohibited Method*) and 2.6 (*Possession of Prohibited Substances and Methods*) shall be:

- First violation: Two (2) years' *Ineligibility*.
- Second violation: Lifetime *Ineligibility*.

However, the *Athlete* or other *Person* shall have the opportunity in each case, before a period of *Ineligibility* is imposed, to establish the basis for eliminating or reducing this sanction as provided in Article 10.5.

10.3 Specified Substances

The *Prohibited List* may identify specified substances which are particularly susceptible to unintentional anti-doping rules violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents. Where an *Athlete* can establish that the *Use* of such a specified substance was not intended to enhance sport performance, the period of *Ineligibility* found in Article 10.2 shall be replaced with the following:

- *First violation:* At a minimum, a warning and reprimand and no period of *Ineligibility* from future *Events*, and at a maximum, one (1) year's *Ineligibility.*
- *Second violation:* Two (2) years' *Ineligibility.*
- *Third violation:* Lifetime *Ineligibility.*

However, the *Athlete* or other *Person* shall have the opportunity in each case, before a period of *Ineligibility* is imposed, to establish the basis for eliminating or reducing (in the case of a second or third violation) this sanction as provided in Article 10.5.

10.4 *Ineligibility* for Other Anti-Doping Rule Violations

The period of *Ineligibility* for other anti-doping rule violations shall be:

10.4.1 For violations of Article 2.3 (refusing or failing to submit to Sample collection) or Article 2.5 (*Tampering* with *Doping Control*), the *Ineligibility* periods set forth in Article 10.2 shall apply.

10.4.2 For violations of Articles 2.7 (*Trafficking*) or 2.8 (administration of *Prohibited Substance* or *Prohibited Method*), the period of *Ineligibility* imposed shall be a minimum of four (4) years up to lifetime *Ineligibility*. An anti-doping rule violation involving a *Minor* shall be considered a particularly serious violation, and, if committed by *Athlete Support Personnel* for violations other than specified substances referenced in Article 10.3, shall result in lifetime *Ineligibility* for such *Athlete Support Personnel*. In addition, violations of such Articles which also violate non-sporting laws and regulations, may be reported to the competent administrative, professional or judicial authorities.

10.4.3 For violations of Article 2.4 (whereabouts violation or missed test), the period of *Ineligibility* shall be at a minimum 3 months and at a maximum 2 years in accordance with the rules established by the *Anti-Doping Organization* whose test was missed or whereabouts requirement was violated. The period of *Ineligibility* for subsequent violations of Article 2.4 shall be as established in the rules of the *Anti-Doping Organization* whose test was missed or whereabouts requirement was violated.

10.5 Elimination or Reduction of Period of *Ineligibility* Based on Exceptional Circumstances.

10.5.1 *No Fault or Negligence*

If the *Athlete* establishes in an individual case involving an anti-doping rule violation under Article 2.1 (presence of *Prohibited Substance* or its *Metabolites or Markers*) or *Use* of a *Prohibited Substance* or *Prohibited Method* under Article 2.2 that he or she bears *No Fault* or *Negligence* for the violation, the otherwise applicable period of Ineligibility shall be eliminated. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an Athlete's Specimen in violation of Article 2.1 (presence of *Prohibited Substance*), the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* eliminated. In the *Event* this Article is applied and the

period of *Ineligibility* otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of *Ineligibility* for multiple violations under Articles 10.2, 10.3 and 10.6.

10.5.2 No *Significant Fault* or *Negligence*

This Article 10.5.2 applies only to anti-doping rule violations involving Article 2.1 (presence of *Prohibited Substance* or its *Metabolites* or *Markers*), Use of a *Prohibited Substance* or *Prohibited Method* under Article 2.2, failing to submit to *Sample* collection under Article 2.3, or administration of a *Prohibited Substance* or *Prohibited Method* under Article 2.8. If an *Athlete* establishes in an individual case involving such violations that he or she bears *No Significant Fault* or *Negligence*, then the period of *Ineligibility* may be reduced, but the reduced period of *Ineligibility* may not be less than one-half of the minimum period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this section may be no less than 8 years. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Specimen* in violation of Article 2.1 (presence of *Prohibited Substance*), the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* reduced.

10.5.3 *Athlete's* Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations by *Athlete Support Personnel* and Others.

An *Anti-Doping Organization* may also reduce the period of *Ineligibility* in an individual case where the Athlete has provided substantial assistance to the Anti-Doping Organization which results in the Anti-Doping Organization discovering or establishing an anti-doping rule violation by another *Person* involving *Possession* under Article 2.6.2 (*Possession* by *Athlete Support Personnel*), Article 2.7 (*Trafficking*), or Article 2.8 (administration to an *Athlete*). The reduced period of *Ineligibility* may not, however, be less than one-half of the minimum period of *Ineligibility* otherwise applicable. If

the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this section may be no less than 8 years.

10.6 Rules for Certain Potential Multiple Violations

10.6.1 For purposes of imposing sanctions under Articles 10.2, 10.3 and 10.4, a second anti-doping rule violation may be considered for purposes of imposing sanctions only if the *Anti-Doping Organization* can establish that the *Athlete* or other *Person* committed the second anti-doping rule violation after the *Athlete* or other *Person* received notice, or after the *Anti-Doping Organization* made a reasonable *Attempt* to give notice, of the first anti-doping rule violation; if the *Anti-Doping Organization* cannot establish this, the violations shall be considered as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction.

10.6.2 Where an *Athlete*, based on the same *Doping Control*, is found to have committed an anti-doping rule violation involving both a specified substance under Article 10.3 and another *Prohibited Substance* or *Prohibited Method*, the *Athlete* shall be considered to have committed a single anti-doping rule violation, but the sanction imposed shall be based on the *Prohibited Substance* or *Prohibited Method* that carries the most severe sanction.

10.6.3 Where an *Athlete* is found to have committed two separate anti-doping rule violations, one involving a specified substance governed by the sanctions set forth in Article 10.3 (Specified Substances) and the other involving a *Prohibited Substance* or *Prohibited Method* governed by the sanctions set forth in Article 10.2 or a violation governed by the sanctions in Article 10.4.1, the period of *Ineligibility* imposed for the second offense shall be at a minimum two years' *Ineligibility* and at a maximum three years' *Ineligibility*. Any *Athlete* found to have committed a third anti-doping rule violation involving any combination of specified substances under Article 10.3 and any other anti-doping rule violation under 10.2 or 10.4.1 shall receive a sanction of lifetime *Ineligibility*.

10.7 *Disqualification* of Results in *Competitions* Subsequent to *Sample* Collection

In addition to the automatic *Disqualification* of the results in the *Competition* which produced the positive *Sample* under Article 9 (Automatic *Disqualification* of Individual Results), all other competitive results obtained from the date a positive *Sample* was collected (whether *In-Competition* or *Out-of-Competition*), or other doping violation occurred, through the commencement of any *Provisional Suspension* or *Ineligibility* period, shall, unless fairness requires otherwise, be *Disqualified* with all of the resulting consequences including forfeiture of any medals, points and prizes.

10.8 Commencement of *Ineligibility* Period

The period of *Ineligibility* shall start on the date of the hearing decision providing for *Ineligibility* or, if the hearing is waived, on the date *Ineligibility* is accepted or otherwise imposed. Any period of *Provisional Suspension* (whether imposed or voluntarily accepted) shall be credited against the total period of *Ineligibility* to be served. Where required by fairness, such as delays in the hearing process or other aspects of *Doping Control* not attributable to the *Athlete*, the body imposing the sanction may start the period of *Ineligibility* at an earlier date commencing as early as the date of *Sample* collection.

10.9 Status During *Ineligibility*

No *Person* who has been declared *Ineligible* may, during the period of *Ineligibility*, participate in any capacity in a *Competition* or activity (other than authorized anti-doping education or rehabilitation programs) authorized or organized by any *Signatory* or *Signatory's* member organization. In addition, for any anti-doping rule violation not involving specified substances described in Article 10.3, some or all sport-related financial support or other sport-related benefits received by such *Person* will be withheld by Signatories, Signatories' member organizations and governments. A *Person* subject to a period of *Ineligibility* longer than four years may, after completing four years of the period of *Ineligibility*, participate in local sport *Events* in a sport other than the sport in which the *Person* committed the anti-doping rule violation, but only so long as the local sport event is not at a level that could otherwise qualify such *Person* directly or indirectly to compete in (or accumulate points toward) a national championship or *International* Event.

10.10 Reinstatement *Testing*

As a condition to regaining eligibility at the end of a specified period of *Ineligibility*, an *Athlete* must, during any period of *Provisional Suspension* or *Ineligibility*, make him or herself available for *Out-of-Competition Testing* by any *Anti-Doping Organization* having testing jurisdiction, and must, if requested, provide current and accurate whereabouts information. If an *Athlete* subject to a period of *Ineligibility* retires from sport and is removed from *Out-of-Competition Testing* pools and later seeks reinstatement, the *Athlete* shall not be eligible for reinstatement until the *Athlete* has notified relevant *Anti-Doping Organizations* and has been subject to *Out-of-Competition Testing* for a period of time equal to the period of *Ineligibility* remaining as of the date the *Athlete* had retired.

ARTICLE 11 CONSEQUENCES TO TEAMS

Where more than one team member in a *Team Sport* has been notified of a possible anti-doping rule violation under Article 7 in connection with an *Event*, the Team shall be subject to *Target Testing* for the *Event*. If more than one team member in a *Team Sport* is found to have committed an anti-doping rule violation during the *Event*, the team may be subject to *Disqualification* or other disciplinary action. In sports which are not *Team Sports* but where awards are given to teams, *Disqualification* or other disciplinary action against the team when one or more team members have committed an anti-doping rule violation shall be as provided in the applicable rules of the International Federation.

ARTICLE 13 APPEALS

13.1 Decisions Subject to Appeal

Decisions made under the *Code* or rules adopted pursuant to the *Code* may be appealed as set forth below in Articles 13.2 through 13.4. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise. Before an appeal is commenced, any post-decision review provided in the *Anti-Doping Organization's* rules must be exhausted, provided that such review respects the principles set forth in Article 13.2.2 below.

13.2 Appeals from Decisions Regarding Anti-Doping Rule Violations. *Consequences*, and *Provisional Suspensions*

A decision that an anti-doping rule violation was committed, a decision imposing *Consequences* for an anti-doping rule violation, a decision that no anti-doping rule violation was committed, a decision that an *Anti-Doping Organization* lacks jurisdiction to rule on an alleged anti-doping rule violation or its *Consequences*, and a decision to impose a *Provisional Suspension* as a result of a *Provisional Hearing* or in violation of Article 7.5 may be appealed exclusively as provided in this Article 13.2.

13.2.1 Appeals Involving *International-Level Athletes*

In cases arising from competition in an *International Event* or in cases involving *International-Level Athletes*, the decision may be appealed exclusively to the Court of Arbitration for Sport ("CAS") in accordance with the provisions applicable before such court.

13.2.3 *Persons* Entitled to Appeal

In cases under Article 13.2.1, the following parties shall have the right to appeal to CAS: (a) the *Athlete* or other *Person* who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the relevant International Federation and any other *Anti-Doping Organization* under whose rules a sanction could have been imposed; (d) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games; and (e) *WADA*. In cases under Article 13.2.2, the parties having the right to appeal to the national-level reviewing body shall be as provided in the *National Anti-Doping Organization's* rules but, at a minimum, shall include: (a) the *Athlete* or other *Person* who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the relevant International Federation; and (d) *WADA*. For cases under Article 13.2.2, *WADA* and the International Federation shall also have the right to appeal to CAS with respect to the decision of the national-level reviewing body. Notwithstanding any other provision herein, the only *Person* that may appeal from a *Provisional Suspension* is the *Athlete* or other *Person* upon whom the *Provisional Suspension* is imposed.

13.3 Appeals from Decisions Granting or Denying a Therapeutic *Use* Exemption
Decisions by *WADA* reversing the grant or denial of a therapeutic use exemption may be appealed exclusively to CAS by the *Athlete* or the *Anti-Doping Organization* whose decision was reversed. Decisions by *Anti-Doping Organizations* other than *WADA* denying therapeutic use exemptions, which are not reversed by *WADA*, may be appealed by *International-Level Athletes* to CAS and by other *Athletes* to the national level reviewing body described in Article 13.2.2. If the national level reviewing body reverses the decision to deny a therapeutic use exemption, that decision may be appealed to CAS by *WADA*.

13.4 Appeals from Decisions Imposing Consequences under Part Three of the *Code*
With respect to consequences imposed under Part Three (Roles and Responsibilities) of the *Code*, the entity upon which consequences are imposed under Part Three of the *Code* shall have the right to appeal exclusively to CAS in accordance with the provisions applicable before such court.

13.5 Appeals from Decisions Suspending or Revoking Laboratory Accreditation
Decisions by *WADA* to suspend or revoke a laboratory's *WADA* accreditation may be appealed only by that laboratory with the appeal being exclusively to CAS.

ARTICLE 17 STATUTE OF LIMITATIONS

No action may be commenced against an *Athlete* or other *Person* for a violation of an anti-doping rule contained in the *Code* unless such action is commenced within eight years from the date the violation occurred.

DEFINITIONS

Adverse Analytical Finding: A report from a laboratory or other approved *Testing* entity that identifies in a *Specimen* the presence of a *Prohibited Substance* or its *Metabolites* or *Markers* (including elevated quantities of endogenous substances) or evidence of the *Use* of a *Prohibited Method*.

Anti-Doping Organization: A Signatory that is responsible for adopting rules for initiating, implementing or enforcing any part of the *Doping Control* process. This includes, for example, the International Olympic Committee, the International Paralympic Committee, other Major Event Organizations that conduct *Testing* at their *Events*, *WADA*, International Federations, and *National Anti-Doping Organizations*.

Athlete: For purposes of *Doping Control*, any *Person* who participates in sport at the international level (as defined by each International Federation) or national level (as defined by each *National Anti-Doping Organization*) and any additional Person who participates in sport at a lower level if designated by the *Person's National Anti-Doping Organization*. For purposes of anti-doping information and education, any Person who participates in sport under the authority of any *Signatory*, government, or other sports organization accepting the *Code*.

Athlete Support Personnel: Any coach, trainer, manager, agent, team staff, official, medical or para-medical *Personnel* working with or treating *Athletes* participating in or preparing for sports competition.

Attempt: Purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation. Provided, however, there shall be no anti-doping rule violation based solely on an *Attempt* to commit a violation if the *Person* renunciates the attempt prior to it being discovered by a third party not involved in the *Attempt*.

Code: The World Anti-Doping *Code*.

Competition: A single race, match, game or singular athletic contest. For example, the finals of the Olympic 100-meter dash. For stage races and other athletic contests where prizes are awarded on a daily or other interim basis the distinction between a Competition and an *Event* will be as provided in the rules of the applicable International Federation.

Consequences of Anti-Doping Rules Violations: An Athletes or other Person's violation of an anti-doping rule may result in one or more of the following: (a) ***Disqualification*** means the *Athletes* results in a particular *Competition* or *Event* are invalidated, with all resulting consequences including forfeiture of any medals, points and prizes; (b) ***Ineligibility*** means the *Athlete* or other *Person* is barred for a specified period of time from participating in any *Competition* or other activity or funding as provided in Article 10.9; and (c) ***Provisional Suspension*** means the *Athlete* or other *Person* is barred temporarily from participating in any *Competition* prior to the final decision at a hearing conducted under Article 8 (Right to a Fair Hearing).

Disqualification: See *Consequences* of *Anti-Doping Rules Violations* above.

Doping Control: The process including test distribution planning, Sample collection and handling, laboratory analysis, results management, hearings and appeals.

Event: A series of individual Competitions conducted together under one ruling body (e.g., the Olympic Games, FINA World Championships, or Pan American Games).

In-Competition: For purposes of differentiating between *In-Competition* and *Out-of-Competition Testing*, unless provided otherwise in the rules of an *International Federation* or other relevant *Anti-Doping Organization*, an *In-Competition* test is a test where an *Athlete* is selected for testing in connection with a specific *Competition*.

Independent Observer Program: A team of observers, under the supervision of *WADA*, who observe the *Doping Control* process at certain *Events* and report on observations. If *WADA* is testing *In-Competition* at an *Event*, the observers shall be supervised by an independent organization.

Ineligibility: See Consequences of *Anti-Doping Rules Violations* above.

International Event: An *Event* where the International Olympic Committee, the International Paralympic Committee, an International Federation, a *Major Event Organization*, or another international sport organization is the ruling body for the *Event* or appoints the technical officials for the *Event*.

International-Level Athlete: *Athletes* designated by one or more International Federations as being within the *Registered Testing Pool* for an International Federation.

International Standard: A standard adopted by *WADA* in support of the *Code*. Compliance with an *International Standard* (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the *International Standard* were performed properly.

Major Event Organizations: This term refers to the continental associations of *National Olympic Committees* and other international multi-sport organizations that function as the ruling body for any continental, regional or other *International Event*.

Marker: A compound, group of compounds or biological parameters that indicates the *Use* of a *Prohibited Substance* or *Prohibited Method*.

Metabolite: Any substance produced by a biotransformation process.

Minor: A natural *Person* who has not reached the age of majority as established by the applicable laws of his or her country of residence.

National Anti-Doping Organization: The entity(ies) designated by each country as possessing the primary authority and responsibility to adopt and implement anti-doping rules, direct the collection of *Samples*, the management of test results, and the conduct of hearings, all at the national level. If this designation has not been made by the competent public authority(ies), the entity shall be the country's *National Olympic Committee* or its designee. [In the United States, this entity is USADA.]

National Event: A sport *Event* involving international or national-level *Athletes* that is not an *International Event*.

National Olympic Committee: The organization recognized by the International Olympic Committee. The term National Olympic Committee shall also include the National Sport Confederation in those countries where the National Sport Confederation assumes typical National Olympic Committee responsibilities in the anti-doping area. [In the United States, this entity is the United States Olympic Committee.]

No Advance Notice: A *Doping Control* which takes place with no advance warning to the *Athlete* and where the *Athlete* is continuously chaperoned from the moment of notification through *Sample* provision.

No Fault or Negligence: The Athlete's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method.

No Significant Fault or Negligence: The *Athletes* establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for *No Fault* or *Negligence*, was not significant in relationship to the anti-doping rule violation.

Out-of-Competition: Any *Doping Control* which is not *In-Competition.*

Participant: Any *Athlete* or *Athlete Support Personnel.*

Person: A natural *Person* or an organization or other entity.

Possession: The actual, physical possession, or the constructive *Possession* (which shall be found only if the *Person* has exclusive control over the *Prohibited Substance/Method* or the premises in which a *Prohibited Substance/Method* exists); provided, however, that if the Person does not have exclusive control over the *Prohibited Substance/Method* or the premises in which a *Prohibited Substance/Method* exists, constructive possession shall only be found if the *Person* knew about the presence of the *Prohibited Substance/Method* and intended to exercise control over it. Provided, however, there shall be no anti-doping rule violation based solely on possession if, prior to receiving notification of any kind that the *Person* has committed an anti-doping rule violation, the *Person* has taken concrete action demonstrating that the *Person* no longer intends to have *Possession* and has renounced the *Person's* previous *Possession.*

Prohibited List: The List identifying the *Prohibited Substances* and *Prohibited Methods.*

Prohibited Method: Any method so described on the *Prohibited List.*

Prohibited Substance: Any substance so described on the *Prohibited List.*

Provisional Hearing: For purposes of Article 7.5, an expedited abbreviated hearing occurring prior to a hearing under Article 8 (Right to a Fair Hearing) that provides the *Athlete* with notice and an opportunity to be heard in either written or oral form.

Provisional Suspension: See *Consequences* above.

Publicly Disclose or Publicly Report: To disseminate or distribute information to the general public or *Persons* beyond those *Persons* entitled to earlier notification in accordance with Article 14.

Registered Testing Pool: The pool of top level *Athletes* established separately by each International Federation and *National Anti-Doping Organization* who are subject to both *In-Competition* and *Out-of-Competition Testing* as part of that International Federation's or Organization's test distribution plan.

Sample Specimen: Any biological material collected for the purposes of *Doping Control.*

Signatories: Those entities signing the Code and agreeing to comply with the Code, including the International Olympic Committee, International Federations, International Paralympic Committee, *National Olympic Committees*, National Paralympic Committees, *Major Event Organizations*, National Anti-Doping Organizations, and *WADA.*

Tampering: Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly to alter results or prevent normal procedures from occurring.

Target Testing: Selection of *Athletes* for *Testing* where specific *Athletes* or groups of *Athletes* are selected on a non-random basis for *Testing* at a specified time.

Team Sport: A sport in which the substitution of players is permitted during a *Competition.*

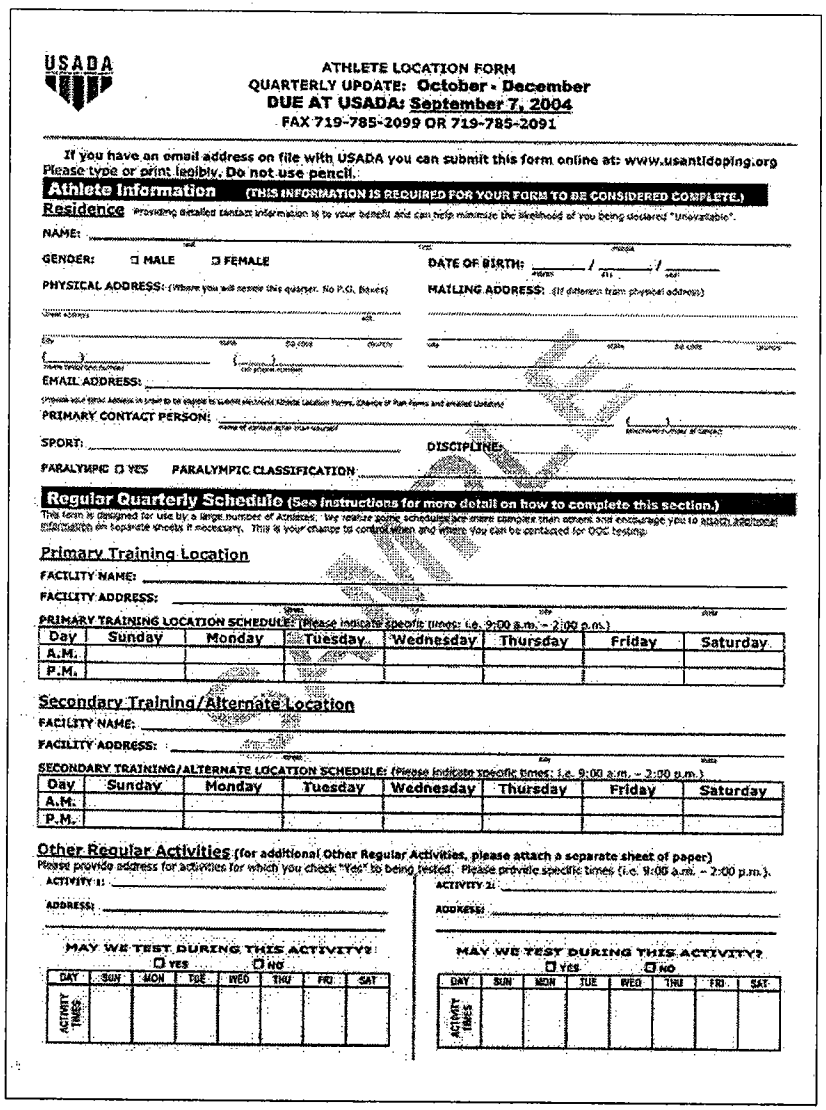
Testing: The parts of the *Doping Control* process involving test distribution planning, *Sample* collection, *Sample* handling, and *Sample* transport to the laboratory.

Trafficking: To sell, give, administer, transport, send, deliver or distribute a *Prohibited Substance* or *Prohibited Method* to an *Athlete* either directly or through one or more third parties, but excluding the sale or distribution (by medical personnel or by *Persons* other than an *Athlete's Support Personnel*) of a *Prohibited Substance* for genuine and legal therapeutic purposes.

Use: The application, ingestion. injection or consumption by any means whatsoever of any *Prohibited Substance* or *Prohibited Method.*

WADA: The World Anti-Doping Agency.

Annex B



USADA

ATHLETE LOCATION FORM
QUARTERLY UPDATE: October - December
DUE AT USADA: September 7, 2004
FAX 719-785-2099 OR 719-785-2091

If you have an email address on file with USADA you can submit this form online at: www.usantidoping.org
Please type or print legibly. Do not use pencil.

Athlete Information (THIS INFORMATION IS REQUIRED FOR YOUR FORM TO BE CONSIDERED COMPLETE.)

Residence Providing detailed contact information is to your benefit and can help minimize the likelihood of you being declared "Unavailable".

NAME: _____ (last) _____ (first) _____ (middle)

GENDER: ☐ MALE ☐ FEMALE DATE OF BIRTH: ____ (month) / ____ (day) / ____ (year)

PHYSICAL ADDRESS: (Where you will reside this quarter. No P.O. Boxes) MAILING ADDRESS: (If different from physical address)

(street address) (city) (state) (zip code) (country)

() (home telephone number) () (cell phone number)

EMAIL ADDRESS: _____
(Provide your email address in order to be eligible to submit electronic Athlete Location Forms, Change of Plan Forms and emailed Updates)

PRIMARY CONTACT PERSON: _____ (name of contact other than yourself) () (telephone number of contact)

SPORT: _____ DISCIPLINE: _____

PARALYMPIC ☐ YES PARALYMPIC CLASSIFICATION: _____

Regular Quarterly Schedule (See instructions for more detail on how to complete this section.)

This form is designed for use by a large number of Athletes. We realize some schedules are more complex than others and encourage you to attach additional information on separate sheets if necessary. This is your chance to control when and where you can be contacted for OOC testing.

Primary Training Location

FACILITY NAME: _____

FACILITY ADDRESS: _____ (street) (city) (state)

PRIMARY TRAINING LOCATION SCHEDULE: (Please indicate specific times: i.e. 9:00 a.m. – 2:00 p.m.)

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
A.M.							
P.M.							

Secondary Training/Alternate Location

FACILITY NAME: _____

FACILITY ADDRESS: _____ (street) (city) (state)

SECONDARY TRAINING/ALTERNATE LOCATION SCHEDULE: (Please indicate specific times: i.e. 9:00 a.m. – 2:00 p.m.)

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
A.M.							
P.M.							

Other Regular Activities (for additional Other Regular Activities, please attach a separate sheet of paper)
Please provide address for activities for which you check "Yes" to being tested. Please provide specific times (i.e. 9:00 a.m. – 2:00 p.m.).

ACTIVITY 1: _____ ADDRESS: _____

MAY WE TEST DURING THIS ACTIVITY? ☐ YES ☐ NO

DAY	SUN	MON	TUE	WED	THU	FRI	SAT
ACTIVITY TIMES							

ACTIVITY 2: _____ ADDRESS: _____

MAY WE TEST DURING THIS ACTIVITY? ☐ YES ☐ NO

DAY	SUN	MON	TUE	WED	THU	FRI	SAT
ACTIVITY TIMES							

USADA

ATHLETE LOCATION FORM (ALF)
INSTRUCTIONS – PLEASE REVIEW

*Remember to update USADA with changes to your schedule throughout the quarter!

If you have an email address on file with USADA you can submit your ALF online at: www.usantidoping.org

Providing detailed contact information is to your benefit and can help minimize the frequency of athletes being declared "Unavailable". The bullets below are intended to define what information is being requested in specific fields of the ALF and why it is being requested. Please note that you should always feel free to attach additional sheets of information as necessary. Remember to put your name and sport on any additional sheets submitted.

Athlete Information (THIS INFORMATION IS REQUIRED FOR YOUR FORM TO BE CONSIDERED COMPLETE.)

- PHYSICAL ADDRESS – This is the location at which you will be staying for the majority of the quarter. A PO Box is not acceptable as a physical address.
- MAILING ADDRESS – Only required if you do not want mail sent to your physical address. This is the address to which USADA will send all future mailings until a new mailing address is provided.
- TELEPHONE/CELL PHONE NUMBERS – Doping Control Officers will use these numbers to try and locate you for OOC testing if you are not found at one of the locations provided by you in subsequent sections of this form.
- PRIMARY CONTACT PERSON/PHONE NUMBER – This is someone who will know your whereabouts if a DCO is having trouble locating you for OOC testing.

Regular Quarterly Schedule (PROVIDE YOUR REGULAR QUARTERLY SCHEDULE. EXCEPTIONS TO THIS CAN BE RECORDED IN SUBSEQUENT SECTIONS AND VIA UPDATES THROUGHOUT THE QUARTER.)

We realize some schedules are more complex than others and encourage you to attach additional information on separate sheets if necessary. Do your best to provide as much information as possible. *This is your chance to control when and where you can be contacted for OOC testing.*

- PRIMARY TRAINING – Please indicate the address of the facility and your regular training schedule (days and times) to the best of your ability.
- SECONDARY TRAINING – If you use an alternate training facility on a regular basis, provide the facility's address and your training schedule (days and times) for that facility in this section.
- OTHER REGULAR ACTIVITIES – Use these sections to advise USADA of activities (work, school, church, etc.) that are part of your regular routine. Be sure to indicate in the check-box provided whether or not you give permission for a DCO to contact you for testing during this activity.

Exceptions to Quarterly Schedule (PROVIDE EXCEPTIONS TO YOUR REGULAR QUARTERLY SCHEDULE.)

If you need additional room to list temporary addresses and/or upcoming competitions, please attach additional information as necessary.

- TEMPORARY ADDRESSES – Use this section to list additional locations where you will be living and/or training throughout the quarter. Vacations should be noted here as well. You can also submit this information via an update at the appropriate time in the quarter. *Be sure to include the dates that you will be at each location.*
- COMPETITION SCHEDULE – List the events at which you will be competing in the upcoming quarter. *Be sure to include the dates of each competition AND the dates of travel to and from competition.*
- TRAVEL DAYS – List specific dates of travel as they relate to Temporary Addresses and Competitions (e.g. 7/1/04, 7/2/04 and 7/8/04).
- SPECIAL EXCEPTIONS – Please list singular activities that are not previously identified on this form and that will alter the schedule provided by your Regular Quarterly Schedule and/or Exceptions to Quarterly Schedule. Examples could include a conference or seminar for work, Graduation, Wedding, or other special occasion, or other activity that would change your schedule for A SINGLE DAY making it difficult to locate you at one of the locations identified elsewhere on your athlete location form. This should be considered for EXCEPTIONS only, and is not for regularly scheduled days off from training or other regularly scheduled activities.
- ATHLETE SIGNATURE/DATE – Your form must be signed and dated to be considered complete.

RETURN YOUR COMPLETED FORM TO USADA BY MAIL OR FAX TO:

USADA – OOC Testing Program
2550 Tenderfoot Hill Street, Suite 200
Colorado Springs, CO 80906
FAX: (719) 785-2099 or (719) 785-2091 TOLL FREE PHONE: (for questions) 1-866-601-2632

OCTOBER-DECEMBER 2004

Exceptions to Quarterly Schedule (See instructions for more detail on how to complete this section.)

NAME: _____ Sport: _____

TEMPORARY ADDRESSES: (Please attach additional sheets as necessary – be sure to write your name on any additional sheets submitted.)

Temporary Residence Address
From: _____ To: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____

Temporary Training Address (if applicable)
Name of facility: _____
Address: _____
City: _____ State: _____ Zip: _____

Temporary Residence Address
From: _____ To: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____

Temporary Training Address (if applicable)
Name of facility: _____
Address: _____
City: _____ State: _____ Zip: _____

Temporary Residence Address
From: _____ To: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____

Temporary Training Address (if applicable)
Name of facility: _____
Address: _____
City: _____ State: _____ Zip: _____

COMPETITION SCHEDULE:

Competition	Location	Country	Competition Dates	Travel Days
Name of competition	City	Country	Starting date To Ending date	Arrival date/s: Day of travel Departure date/s: Day of travel
Name of competition	City	Country	Starting date To Ending date	Arrival date/s: Day of travel Departure date/s: Day of travel
Name of competition	City	Country	Starting date To Ending date	Arrival date/s: Day of travel Departure date/s: Day of travel
Name of competition	City	Country	Starting date To Ending date	Arrival date/s: Day of travel Departure date/s: Day of travel

Special Exceptions:

Please list singular activities that are not previously identified on this form and that will alter the schedule provided by your Regular Quarterly Schedule and/or Exceptions to Quarterly Schedule. Examples could include a conference or seminar for work, graduation, wedding or other special occasion, or other activity that would change your schedule for A SINGLE DAY making it difficult to locate you at one of the locations identified elsewhere on your athlete location form. This should be considered for EXCEPTIONS only, and is not for regularly scheduled days off from training or other regularly scheduled activities.

Activity: _____ Starting: _____ Date of Activity: _____
Activity: _____ Starting: _____ Time of Activity: _____
Activity: _____ Starting: _____ Date of Activity: _____

I acknowledge that this form, and the information submitted, may be shared with the World Anti Doping Agency on the condition that this information is to be used for doping control purposes only.

ATHLETE SIGNATURE: _____ Date: _____ SIGNATURE IS REQUIRED FOR FORM TO BE CONSIDERED COMPLETE.

ANNEX C

The following documents will accompany the initial notification to the athlete or other person of a positive "A" sample analysis:

1. A standard notice setting forth the review procedures, athlete's or other person's rights, and contact information for the USOC Athlete Ombudsman (including name, telephone number, e-mail address and website URL)

2. Notification of the prohibited substance at issue which could result in a doping violation. In those cases where an administrative threshold concentration is employed, that threshold will be noted. When possible, the degree to which the athlete's or other person's sample exceeds the threshold will be reported.

3. An abbreviated analytical report to the "A" confirmation analysis. The abbreviated data should include applicable analytical confirmation technique (e.g., gas chromatography/mass spectrometric) graphical data for negative control urine, a positive control urine (including quantitative data where relevant), and the athlete's or other person's sample. The purpose of this data is to allow the athlete or other person or their representative to determine a course of action. It is understood that due to time constraints involved, there is typically less time to review and organize this data prior to transmittal than with the documentation package to accompany the "B" sample which will also address documents related to the "A" analysis.

4. For EPO cases, provide the Basic Area Percentage (BAP) of r-EPO, stated as a percentage term.

5. A cover page summarizing, in plain English, the following data contained in the laboratory documentation package: (i) the test collection date; (ii) the name of the substance reported positive or elevated; and (iii) quantification information as follows: (a) for substances where WADA has established a reporting threshold, an estimate of the concentration relative to the threshold; (b) for T/E ratios, the approximate screen concentrations of T and E [note that T/E ratios are reported based on a comparison of the relative signals of T and E not a comparison of absolute quantities of T and E]; (c) for non-threshold substances, a statement whether the concentration is relatively "high," "medium" or "low" with a reference range provided for the positive or elevated substance in question. Note that for non-threshold substances the presence of any quantity of the prohibited substance is an anti-doping rule violation.

ANNEX D

The following documentation will be supplied as the standard documentation package:

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List of laboratory staff involved in the test, including signatures and/or initials and position title(s)
Sample identification information
Organization requesting the test
Date of sample collection and site identification
USADA sample identification number
Laboratory sample identification number
Urine integrity test results (if completed)
Chain of custody documentation for sample container
Doping Control Notification form (Laboratory copy)
Transportation chain of custody (e.g., courier documentation, laboratory receipt of container)
"A" sample container chain(s) of custody
Documentation of any deviations from the written screening procedures, if any
"A" Sample Screening Results
Relevant aliquot chain(s) of custody
Screening procedure data, including chromatograms (or other relevant data), for Negative control urine
Positive control urine (with concentration indicated, if relevant)
Sample urine aliquot(s)
Analytical run instrument validation data (e.g.; tune data)
Documentation of any deviations from the written screening procedures, if any
"A" Sample Confirmation Results
Summary of the analytical principles of the confirmation method
Aliquot chain of custody
Sequence verification data
Confirmation procedure data, including chromatograms (or other relevant data), for Negative control urine
Positive control urine (with concentration indicated, if relevant)
Standard(s)/calibrator(s) (if relevant)
Sample urine aliquot(s)
Analytical run instrument validation data (e.g.; tune data)
"A" sample report (including numerical data for threshold substances*)
pH, Specific Gravity, and other urine integrity test results (if applicable, including abnormal appearance of sample) performed in laboratory.

Documentation of any deviations from the written screening procedures, if any
"B" Sample Confirmation Results
"B" sample container chain(s) of custody
Summary of the analytical principles of the confirmation method (if different than "A")
Aliquot chain of custody
Sequence verification data
Confirmation procedure data, including chromatograms (or other relevant data), for
Negative control urine
Positive control urine (with concentration indicated, if relevant)
Standard(s)/calibrator(s) (if relevant)
Sample urine aliquot(s)
Analytical run instrument validation data (e.g., tune data)
"B" sample report (including numerical data for threshold substances*)
Documentation of any deviations from the written screening procedures, if any
Reports and Correspondence
All facsimiles or letters related to analysis and reporting of sample results

*For threshold substances, an estimate of the ratio or concentration or an estimate of the concentration relative to the threshold (i.e. 20 times the threshold concentration) is deemed acceptable.

ANNEX E

American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes

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American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes [1]

R-1. Applicability

The Commercial Arbitration Rules of the AAA, as modified by these Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes (Supplementary Procedures) shall apply to arbitrations, which arise out of the USADA Protocol. To the extent that there is any variance between the Commercial Arbitration Rules and the Supplementary Procedures, the Supplementary Procedures shall control.

R-2. AAA and Delegation of Duties

Doping cases shall be administered by the AAA through the AAA Vice President then serving as the Secretary for the North American/Central American/Caribbean Islands Decentralized Office of The Court of Arbitration for Sport or his/her designee (Administrator).

R-3. National *Pool* of Arbitrators

The Pool of Arbitrators for doping cases shall consist of the North American Court of Arbitration for Sport (CAS) Arbitrators who shall also be AAA Arbitrators (the Arbitrator Pool). Any reference to arbitrator in these rules shall also refer to an arbitration panel consisting of three arbitrators, if applicable. All arbitrators in the Arbitrator Pool shall be offered training by the AAA.

[1] The provisions in italics are modifications specifically adopted for proceedings under the United States Anti-Doping Agency (USADA) Protocol for Olympic Movement Testing (USADA Protocol) and supersede the provisions set forth in the Commercial Arbitration Rules of the American Arbitration Association (AAA) (which are otherwise set forth in regular non-italic type).

R-4. Initiation *by USADA*

Arbitration proceedings shall be initiated by USADA by sending a notice to the athlete or other person charged with a doping offense and the Administrator, which sets forth the sanction, consistent with the applicable International Federation rules, the mandatory Articles from the World Anti-Doping Code (Annex A of the USADA Protocol) and the United States Olympic Committee ("USOC") National Anti-Doping Policies, which USADA is seeking to have imposed and other possible sanctions, which could be imposed under the applicable International Federation rules the mandatory Articles from the World Anti-Doping Code (Annex A of the USADA Protocol) and the USOC National Anti-Doping Policies. The notice shall also advise the athlete of the name, telephone number and website of the Athlete Ombudsman and shall include a copy of the USADA Protocol and these Supplemental Procedures. The parties to the proceeding shall be USADA and the athlete or other person charged with a doping offense. The applicable International Federation shall also be invited to join in the proceeding as a party or as an observer. The athlete shall have the right to invite the Athlete Ombudsman as an observer, but under no circumstances may any party or arbitrator compel the Athlete Ombudsman to testify as a witness. If the parties agree or the athlete or other person charged with a doping offense requests and the arbitrator agrees, the hearing shall be open to the public.

R-5. Initiation under a Submission

Parties to any existing dispute may commence an arbitration under these rules by filing at any office of the AAA two copies of a written submission to arbitrate under these rules, signed by the parties. It shall contain a statement of the nature of the dispute, the names and addresses of all parties, any claims and counterclaims, the amount involved, if any, the remedy sought, and the hearing locale requested, together with the appropriate filing fee as provided in the schedule included with these rules. Unless the parties state otherwise in the submission, all claims and counterclaims will be deemed to be denied by the other party.

R-6. Changes of Claim

After filing of a claim, if *any* party desires to make any new or different claim or counterclaim, it shall be made in writing and filed with the AAA. The party asserting such a claim or counterclaim shall provide a copy to the other party, who shall have 15 days from the date of such transmission within which to file an answering statement with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

R-7. Applicable Procedures

All cases shall be administered in accordance with Sections R-1 through R-56 of these rules.

The applicable procedure shall be the regular procedure (as opposed to the Expedited or Complex procedures) set forth in the AAA Commercial Arbitration Rules. At the request of any party, any time period set forth in these procedures may be shortened by the arbitrator(s) where doing so is reasonably necessary to resolve any athlete's eligibility before a protected competition, while continuing to protect the right of an athlete or other person charged with a doping offense to a fair hearing. The shortened time periods shall not prohibit the athlete's or other person's right to request three (3) arbitrators or choose a neutral arbitrator.

If a request to expedite the adjudication process is made prior to the arbitration panel being appointed, the AAA shall randomly select 1 arbitrator from the Arbitrator Pool, who shall determine whether the adjudication process shall be expedited and the schedule pursuant to which the process shall proceed. This randomly selected arbitrator shall not sit on the panel.

If a request to expedite the adjudication process is made after the arbitration panel is appointed, the arbitration panel shall determine whether the adjudication process shall be expedited and the schedule pursuant to which the process shall proceed.

The AAA shall immediately notify the Athlete Ombudsman and the USOC General Counsel's office of any arbitration that may be or has been initiated under these expedited procedures.

R-8. Jurisdiction

(a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.

(b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

(c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

R-9. Mediation

The reference to mediation has been deleted.

R-10. Administrative Conference

At the request of any party or upon the AAA's own initiative, the AAA may conduct an administrative conference, in person or by telephone, with the parties and/or their representatives. The conference may address such issues as arbitrator selection, potential mediation of the dispute, potential exchange of information, a timetable for hearings and any other administrative matters. *There is no administrative fee for this service.*

R-11. Fixing of Locale

The locale of the arbitration shall be in the United States at a location determined by the Administrator using criteria established by the AAA but making every effort to give preference to the choice of the athlete or other person charged with a doping offense.

R-12. Qualifications of an Arbitrator

(a) Any neutral arbitrator appointed pursuant to Section R-13, R-14, R-15, or selected by mutual choice of the parties or their appointees, shall be subject to disqualification for the reasons specified in Section R-19. If the parties specifically so agree in writing, the arbitrator shall not be subject to disqualification for those reasons.

(b) Party-appointed arbitrators are expected to be neutral and may be disqualified for the reasons set forth in R-19.

R-13. Appointment of the Arbitration Panel

The arbitrator(s) shall be appointed in the following manner:

(a) Immediately after the *initiation of a proceeding by USADA (as set forth in R-4),* the AAA shall send simultaneously to each party to the dispute an identical list of *all* names of persons *in the Arbitrator Pool.*

(b) *The proceeding shall be heard by 1 arbitrator from the list of persons in the Arbitrator Pool (as set forth in R-3), unless within 5 days following the initiation of the proceeding by USADA, a party elects instead to have the matter heard by a panel of 3 arbitrators from the Arbitrator Pool (Arbitration Panel). Such election shall be in writing and served on the Administrator and the other parties to the proceeding.*

(c) *If the proceeding is to be heard by 1 arbitrator, that arbitrator shall be appointed as follows:*

(i) *Within 10 days following receipt of the Arbitrator Pool list provided by the Administrator under R-13(a), the parties shall notify the Administrator of the name of the person who is mutually agreeable to the parties to serve as the arbitrator.*

(ii) If the parties are unable to agree upon an arbitrator *by the time set forth in paragraph (c)(i) of this rule,* each party to the dispute shall have 5 *additional* days in which to *strike up to one third of the Arbitrator Pool, rank the* remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without the submission of additional lists.

(d) *If the proceeding is to be heard by a panel of three arbitrators, those arbitrators shall be appointed as follows:*

(i) *Within 5 days following receipt of the Arbitrator Pool list provided by the Administrator under R-13(a) or from receipt of notice of the request to have a three (3) arbitrator panel, whichever is later, USADA, or USADA and the International Federation, if a party, shall designate 1 arbitrator from the Arbitrator Pool. The athlete or other person charged with a doping offense shall have an additional 5 days following receipt of the arbitrator choice from USADA, or from USADA and the International Federation, if a party, to designate 1 arbitrator from the Arbitrator Pool.*

(ii) *The 2 arbitrators chosen by the parties shall choose the third arbitrator from among the remaining members of the Arbitrator Pool. The AAA shall furnish to the party-appointed arbitrators the Arbitrator Pool list. If the 2 arbitrators chosen by the parties are unable, within 7 days following their selection, to choose the third arbitrator, then the party-appointed arbitrators shall so notify the AAA which shall notify the parties. Within 5 days of receipt of notice from the AAA that the party-selected arbitrators are unable to reach or have not reached agreement, the parties shall then each strike up to one third of the Arbitrator Pool and rank the remaining members in order of preference. From among the persons who have not been stricken by the parties, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of 1 arbitrator to serve. The third arbitrator shall serve as Chair of the Arbitration Panel.*

R-14. Direct Appointment by a Party

The reference to Direct Appointment by a Party has been deleted.

R-15. Appointment of Neutral Arbitrator by Party-Appointed Arbitrators or Parties

The reference to Appointment of Neutral Arbitrator by Party-Appointed Arbitrators or Parties has been deleted.

R-16. Nationality of Arbitrator

Where the parties are nationals or residents of different countries, the AAA, at the request of any party or on its own initiative, may appoint as a neutral arbitrator a national of a country other than that of any of the parties. The request must be made prior to the time set for the appointment of the arbitrator as agreed by the parties or set by these rules.

R-17. Number of Arbitrators

The number of arbitrators shall be 1 unless any party requests three.

R-18. Notice to Arbitrator of Appointment

Notice of the appointment of the neutral arbitrator, whether appointed mutually by the parties or by the AAA, shall be sent to the arbitrator by the AAA, together with a copy of these rules, and the signed acceptance of the arbitrator shall be filed with the AAA prior to the opening of the first hearing.

R-19. Disclosure and Challenge Procedure

(a) Any person appointed as a neutral arbitrator shall disclose to the AAA any circumstance likely to affect impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives.

(b) Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.

(c) Upon objection of a party to the continued service of a neutral arbitrator, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

R-20. Communication with Arbitrator

(a) No party and no one acting on behalf of any party shall communicate *unilaterally concerning the arbitration with a neutral arbitrator or a candidate for neutral arbitrator. Unless the parties agree otherwise or the arbitrator so directs, any communication from the parties to a neutral arbitrator shall be sent to the AAA for transmittal to the arbitrator. No party and no one acting on behalf of any party shall communicate with any arbitrator concerning the selection of the third arbitrator.*

(b) Once the panel has been constituted, no party and no one acting on behalf of any party shall communicate unilaterally concerning the arbitration with any arbitrator.

R-21. Vacancies

(a) If for any reason an arbitrator is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.

(b) In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

(c) In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-22. Preliminary Hearing

(a) At the request of any party or at the discretion of the arbitrator or the AAA, the arbitrator may schedule as soon as practicable a preliminary hearing with the parties and/or their representatives. The preliminary hearing may be conducted by telephone at the arbitrator's discretion. *There is no administrative fee for the first preliminary hearing.*

(b) During the preliminary hearing, the parties and the arbitrator should discuss the future conduct of the case, including clarification of the issues and claims, a schedule for the hearings and any other preliminary matters.

R-23. Exchange of Information

(a) At the request of any party or at the discretion of the arbitrator, consistent with the expedited nature of arbitration, the arbitrator may direct (i) the production of documents and other information, and (ii) the identification of any witnesses to be called.

(b) *Unless otherwise agreed by the parties or ordered by the arbitrator,* at least 5 business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing.

(c) The arbitrator is authorized to resolve any disputes concerning the exchange of information.

R-24. Date, Time, and Place of Hearing

Except as may be mutually agreed by the parties or upon the request of a single party for good cause as may be determined by the arbitrator, the hearing, including any briefing ordered by the arbitrator, shall be completed within three months of the appointment of the arbitrator. On good cause shown by any party, the hearing process shall be expedited as may be necessary in order the resolve the determination of an athlete's eligibility prior to any protected competition or team selection for a protected competition.

R-25. Attendance at Hearings

The arbitrator and the AAA shall maintain the privacy of the hearings unless the law provides to the contrary *or the hearing is open to the public as prescribed in R-4 (The athlete or other person charged with a doping offense shall have the right to invite the Athlete Ombudsman as an observer regardless).* Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power

to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person other than a party and its representatives. *If the parties agree, or the athlete or other person charged with a doping offense requests and the arbitrator agrees, hearings may also be conducted telephonically.*

R-26. Representation

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

R-27. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

R-28. Stenographic Record

Any party desiring a stenographic record of all or a portion of the hearing *shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least 3 days in advance of the start of the hearing* or as required by the arbitrator. *The requesting party or parties shall pay the cost of the* transcript they request, whether full or partial. If a party seeks a copy of a transcript, full or partial, requested by another party, then the other party shall pay half the costs of the transcript to the requesting party. If the entire transcript is requested by the parties jointly, or if all or a portion of the transcript is determined by the arbitrator to be the official record of the proceeding or necessary to the arbitrator's decision, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator with the costs of the transcription divided equally between the parties. The arbitrator may award the costs of transcription for a transcript requested by the arbitrator as expenses of the arbitration pursuant to R-45 and R-52.

R-29. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-30. Postponements

The arbitrator may postpone any hearing upon agreement of the parties, upon request of a party for good cause shown, or upon the arbitrator's own initiative. *A party or parties causing a postponement of a hearing will be charged a postponement fee, as set forth in the administrative fee schedule.*

R-31. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

R-32. Conduct of Proceedings

(a) The claimant shall present evidence to support its claim. The respondent shall then present evidence to support its defense. Witnesses for each party shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

(b) The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(c) The parties may agree to waive oral hearings in any case.

R-33. Evidence

(a) The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default or has waived the right to be present.

(b) The arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant.

(c) The arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

(d) An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

(e) Hearings conducted pursuant to these rules shall incorporate mandatory Articles from the World Anti-Doping Code (Annex A of the USADA Protocol). If the World Anti-Doping Code is silent on an issue, then the USADA Protocol, the USOC National Anti-Doping Policies, and the International Federation's anti-doping rules shall apply as determined by the arbitrator.

R-34. Evidence by Affidavit and Post-hearing Filing of Documents or Other Evidence

(a) The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

(b) If the parties agree, *if any party requests and the arbitrator agrees, or if* the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-35. Inspection or Investigation

An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time and the AAA shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

R-36. Interim Measures

(a) The arbitrator may take whatever interim measures he or she deems necessary, including injunctive relief and measures for the protection or conservation of property and disposition of perishable goods.

(b) Such interim measures may take the form of an interim award, and the arbitrator may require security for the costs of such measures.

(c) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

R-37. Closing of Hearing

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided in Section R-34 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the closing date of the hearing. The time limit within which the arbitrator is required to make the award shall commence, in the absence of other agreements by the parties, upon the closing of the hearing.

R-38. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed in the contract, the arbitrator may reopen the hearing and shall have *10 days* from the closing of the reopened hearing within which to make an award. *The 30 day period for re-opening a hearing [under rule 38 of the Commercial Arbitration Rules] shall be reduced to 10 days.*

R-39. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

R-40. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

R-41. Serving of Notice

(a) Any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith, or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party, or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard to the dispute is or has been granted to the party.

(b) The AAA, the arbitrator and the parties may also use overnight delivery or electronic facsimile transmission (fax), to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by electronic mail (Email), or other methods of communication.

(c) Unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

R-42. Majority Decision

When the panel consists of more than one arbitrator, unless required by law or by the arbitration agreement, a majority of the arbitrators must make all decisions.

R-43. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than *10 days* from the date of closing the hearing, or,

if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator. *The 30 day period given to the arbitrator under rule 43 of the Commercial Arbitration Rules for rendering an award shall be reduced to 10 days.*

R-44. Form of Award

Any award shall be in writing and signed by a majority of the arbitrators. It shall be executed in the manner required by law. *In all cases, the arbitrator shall render a reasoned award.*

R-45. Scope of Award

(a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.

(b) In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and apportion the fees, expenses, and compensation related to such award as the arbitrator determines is appropriate.

(c) In the final award, the arbitrator shall assess the fees, expenses, and compensation provided in R-51, R-52, and R-53. The arbitrator may apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate.

(d) The award of the arbitrator(s) may include: (a) interest at such rate and from such date as the arbitrator(s) may deem appropriate; and (b) an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.

(e) All fees and expenses payable to the AAA, the arbitrator, or for witnesses or proof produced at the direct request of the arbitrator shall be paid solely by the USOC to the AAA.

R-46. Award upon Settlement

If the parties settle their dispute during the course of the arbitration and if the parties so request, the arbitrator may set forth the terms of the settlement in a "consent award."

R-47. Delivery of Award to Parties

Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at the last known addresses, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

The AAA shall also provide a copy (preferably in electronic form) of the award to the appropriate National Governing body, the USOC General Counsel's office and the Athlete Ombudsman.

R-48. Modification of Award

Within 5 days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator, through the AAA, to correct any clerical, typographical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other parties shall be given 5 days to respond to the request. The arbitrator shall dispose of the request within 5 days after transmittal by the AAA to the arbitrator of the request and any response thereto. *The time periods provided for seeking modification of the award under rule 48 of the Commercial Arbitration Rules shall be reduced to 5 days.*

R-49. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party, furnish to the party, at the party's expense, certified copies of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration. *The AAA shall also furnish copies of documents required in connection with CAS proceedings.*

R-49A. Appeal Rights

The arbitration award may be appealed to CAS as provided in Annex A of the USADA Protocol, which incorporates the mandatory Articles on Appeals from the World Anti-Doping Code. Notice of appeal shall be filed with the Administrator within the time period provided in the CAS appellate rules. Appeals to CAS filed under these rules shall be heard in the United States. The decisions of CAS shall be final and binding on all parties and shall not be subject to any further review or appeal except as permitted by the Swiss Federal Judicial Organization Act or the Swiss Statute on Private International Law.

R-50. Applications to Court and Exclusion of Liability

(a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.

(c) Parties to an arbitration under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(d) Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

R-51. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe filing and other administrative fees and service charges to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable.

The filing fee shall be advanced by the party or parties making a claim or counterclaim, subject to final apportionment by the arbitrator in the award.

The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

R-52. Expenses

The expenses of witnesses for *any party* shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne *as detailed in R-45.*

R-53. Neutral Arbitrator's Compensation

(a) Arbitrators shall be compensated at a rate consistent with the *current CAS rates.*

(b) If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the AAA and confirmed to the parties.

(c) Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

R-54. Deposits

The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

R-55. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

R-56. Suspension for Nonpayment

If arbitrator compensation or administrative charges have not been paid in full, the AAA may so inform the parties in order that one of them may advance the required payment. If such payments are not made, the arbitrator may order the suspension or termination of the proceedings. If no arbitrator has yet been appointed, the AAA may suspend the proceedings.

ANNEX F

Time Line

Approximate Timelines and Notices Under USADA Protocol
(This timeline is for general guidance only and does not create any obligation, requirement or right under the USADA Protocol)

STEP IN PROCESS		NOTICE GOES TO
Urine provided by Athlete		
- 2 weeks -		
Negative A laboratory report	→	Athlete, NGB & USOC[1]
Positive (or elevated) A lab report	→	Athlete, NGB & USOC
- 2 weeks -		
B lab report (positive or negative) Notice of other potential doping violations	→	Athlete, NGB & USOC
- 3 weeks -		
Review Panel Recommendation	→	Athlete, NGB, USOC, IF & WADA
- 10 days -		
Notice that the athlete has accepted a sanction proposed by USADA	→	Athlete, NGB, USOC, IF & WADA - Public announcement of sanction
Notice of hearing	→	Athlete, IF, (NGB, USOC & WADA, but not as parties)
- 3 months -		
AAA/CAS Decision	→	Athlete, IF, NGB, USOC & WADA - Public announcement of sanction
- 20 days -		
Appeal by Athlete, USADA, WADA or IF of AAA decision to CAS	→	Athlete, IF, NGB, USOC & WADA
- 3 months -		
Decision by CAS on appeal	→	CAS decision is a public document

[1] Notice from USADA will include the date and location of the sample collection, the athlete's sample number and name and the laboratory test result. The WADA accredited laboratories are required to give notice to WADA and relevant IF directly any time there is a positive A or B test. However, that notice does not include the athlete's name (samples sent to the labs are identified only by number – not by name). Most NGBs will, upon request, routinely forward the athlete's name to the IF and update the IF on the status of proceedings.

ANNEX G

Language to be set forth in USADA correspondence offering an athlete the opportunity to waive analysis of the athlete's B specimen

" The prohibited substance (or method) [identify substance or method] was reported by the laboratory as being present in the A specimen of your sample.

" The USADA Protocol requires that for a sample to be considered positive, the prohibited substance or method must be found by the laboratory in both the A specimen and B specimen of the athlete's sample.

" You and/or your representative have the right to be present, at your expense, to observe the B specimen opening and analysis.

" By waiving the testing of the B specimen, you accept the laboratory results, including the finding of [the substance or method identified] in your sample. Under applicable anti-doping rules, the finding of a prohibited substance or method in an athlete's sample constitutes a doping violation.

" The sanctions which may be imposed on you if a doping violation is found include [describe potential sanctions].

" You may wish to contact John Ruger, the USOC Athlete Ombudsman, who is completely independent of USADA, or your own personal attorney, for assistance or further information. Mr. Ruger may be reached at One Olympic Plaza, Colorado Springs, CO 80909; by telephone at (888)-ATHLETE; by fax at (303) 444-6626; or by email at john.ruger@usoc.org.

" A copy of the USADA Protocol with attachments is enclosed with this letter.

ANNEX H

Retirement Rules

In accordance with the USOC ADP, any athlete or other person enrolled in the USADA Out of Competition ("OOC") testing program who wishes to be removed from the program on account of retirement, must promptly notify in writing, USADA and the applicable National Governing Body ("NGB"). **Additionally, it is important for you to check with your particular International Federation ("IF") to ensure compliance with any required IF retirement procedures or policies.**

If you retire, you will be removed immediately from the USADA OOC testing program. In accordance with the USOC ADP, if you ever want to come out of retirement and return to eligible status, you must enroll in the USADA OOC testing program for at least six (6) months in advance of regaining eligible status. Furthermore, pursuant to the USOC policies, all athletes or other persons who are candidates for membership on the U.S. Olympic, Paralympic or Pan American teams must be enrolled in the USADA OOC testing program for a period up to twelve (12) months before the commencement of the competition. Additionally, it is important for you to confirm whether your particular IF has additional requirements in order for you to regain eligibility after retirement.

NOTES



UNITED STATES ANTI-DOPING AGENCY

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Web site: www.usantidoping.org

USADA DRUG REFERENCE LINE

1-800-233-0393 (within the U.S.)

1-719-785-2020 (outside the U.S.)

E-mail: drugreference@usantidoping.org

UNITED STATES ANTI-DOPING AGENCY

We're Moving!

The U.S. Anti-Doping Agency will be moving its office.
Effective September 1, 2005, the new address will be:

1330 Quail Lake Loop, Suite 260
Colorado Springs, Colorado 80906-4651 USA

The office phone and fax numbers will remain the same.

Phone: +1(719) 785-2000
Toll-free: (866) 601-2632 (in the U.S.)
Fax: +1(719) 785-2001

Drug Reference Line™:
Toll-free: (800) 233-0393 (in the U.S.)
+1(719) 785-2020 (outside the U.S.)

TAB 4

World Anti-Doping Code



2003

World Anti-Doping Code
March 2003

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INTRODUCTION

THE PURPOSE, SCOPE AND ORGANIZATION OF THE WORLD ANTI-DOPING PROGRAM AND THE *CODE*

The purposes of the World Anti-Doping Program and the *Code* are:

- To protect the *Athletes'* fundamental right to participate in doping-free sport and thus promote health, fairness and equality for *Athletes* worldwide; and

- To ensure harmonized, coordinated and effective anti-doping programs at the international and national level with regard to detection, deterrence and prevention of doping.

THE WORLD ANTI-DOPING PROGRAM

The World Anti-Doping Program encompasses all of the elements needed in order to ensure optimal harmonization and best practice in international and national anti-doping programs. The main elements are:

Level 1: The *Code*

Level 2: *International Standards*

Level 3: Models of Best Practice

THE *CODE*

The *Code* is the fundamental and universal document upon which the World Anti-Doping Program in sport is based. The purpose of the *Code* is to advance the anti-doping effort through universal harmonization of core anti-doping elements. It is intended to be specific enough to achieve complete harmonization on issues where uniformity is required, yet general enough in other areas to permit flexibility on how agreed upon anti-doping principles are implemented.

INTERNATIONAL STANDARDS

International Standards for different technical and operational areas within the anti-doping program will be developed in consultation with the *Signatories* and governments and approved by *WADA*. The purpose of the *International Standards* is harmonization among *Anti-Doping Organizations* responsible for specific technical and operational parts of the anti-doping programs. Adherence to the *International Standards* is mandatory for compliance with the *Code*. The *International Standards* may be revised from time to time by the *WADA* Executive Committee after reasonable consultation with the *Signatories* and governments. Unless provided otherwise in the *Code*, *International Standards* and all revisions shall become effective on the date specified in the *International Standard* or revision.

MODELS OF BEST PRACTICE

Models of Best Practice based on the *Code* will be developed to provide state of the art solutions in different areas of anti-doping. The Models will be recommended by *WADA* and made available to *Signatories* upon request but will not be mandatory. In addition to providing models of anti-doping documentation, *WADA* will also make some training assistance available to the *Signatories*.

International Standards Comment: *International Standards will contain much of the technical detail necessary for implementing the Code. This would include, for example, the detailed requirements for Sample collection, laboratory analysis and laboratory accreditation currently found in the Olympic Movement Anti-Doping Code 1999 ("OMADC"). International Standards, while expressly incorporated into the Code by reference, will, in consultation with the Signatories and governments, be developed by experts and set forth in separate technical documents. It is important that the technical experts be able to make timely changes to the International Standards without requiring any amendment of the Code or individual stakeholder rules and regulations.*

All applicable International Standards will be in place by January 1, 2004.

Models of Best Practice Comment: *WADA will prepare model anti-doping rules and regulations tailored to the needs of each of the major groups of Signatories (e.g., International Federations for individual sports, International Federations for team sports, National Anti-Doping Organizations, etc.). These model rules and regulations will conform with and be based on the Code, will be state of the art examples of best practices and will contain all of the detail (including reference to International Standards) necessary to conduct an effective anti-doping program.*

These model rules and regulations will provide alternatives from which stakeholders may select. Some stakeholders may choose to adopt the model rules and regulations and other models of best practices verbatim. Others may decide to adopt the models with modifications. Still other stakeholders may choose to develop their own rules and regulations consistent with the general principles and specific requirements set forth in the Code.

Other model documents for specific parts of the anti-doping work may be developed based on generally recognized stakeholder needs and expectations. This could include models for national anti-doping programs, results management, Testing (beyond the specific requirements set forth in the International Standard for Testing), education programs, etc. All Models of Best Practice will be reviewed and approved by WADA before they are included in the World Anti-Doping Program.

FUNDAMENTAL RATIONALE FOR THE WORLD ANTI-DOPING *CODE*

Anti-doping programs seek to preserve what is intrinsically valuable about sport. This intrinsic value is often referred to as "the spirit of sport"; it is the essence of Olympism; it is how we play true. The spirit of sport is the celebration of the human spirit, body and mind, and is characterized by the following values:

- Ethics, fair play and honesty.
- Health.
- Excellence in performance.
- Character and education.
- Fun and joy.
- Teamwork.
- Dedication and commitment.
- Respect for rules and laws.
- Respect for self and other participants.
- Courage.
- Community and solidarity.

Doping is fundamentally contrary to the spirit of sport.

PART ONE

DOPING CONTROL

INTRODUCTION

Part One of the *Code* sets forth specific anti-doping rules and principles that are to be followed by organizations responsible for adopting, implementing or enforcing anti-doping rules within their authority - - e.g., the International Olympic Committee, International Paralympic Committee, International Federations, *Major Event Organizations*, and *National Anti-Doping Organizations*. All of these organizations are collectively referred to as *Anti-Doping Organizations*.

Part One of the *Code* does not replace, or eliminate the need for, comprehensive anti-doping rules adopted by each of these *Anti-Doping Organizations*. While some provisions of Part One of the *Code* must be incorporated essentially verbatim by each *Anti-Doping Organization* in its own anti-doping rules, other provisions of Part One establish mandatory guiding principles that allow flexibility in the formulation of rules by each *Anti-Doping Organization* or establish requirements that must be followed by each *Anti-Doping Organization* but need not be repeated in its own anti-doping rules. The following Articles, as applicable to the scope of anti-doping activity which the *Anti-Doping Organization* performs, must be incorporated into the rules of each *Anti-Doping Organization* without any substantive changes (allowing for necessary non-substantive editing

Introduction Comment: *For example it is critical to harmonization that all Signatories base their decisions on the same list of anti-doping rule violations, the same burdens of proof and impose the same Consequences for the same anti-doping rule violations. These substantive rules must be the same whether a hearing takes place before an International Federation, at the national level or before CAS. On the other hand, it is not necessary for effective harmonization to force all Signatories to use one single results management and hearing process. At present, there are many different, yet equally effective processes for results management and hearings within different International Federations and different national bodies. The Code does not require absolute uniformity in results management and hearing procedures; it does, however, require that the diverse approaches of the Signatories satisfy principles stated in the Code.*

With respect to Article 13, subpart 13.2.2 is not included in the provisions required to be adopted essentially verbatim, as 13.2.2 establishes mandatory guiding principles that allow some flexibility in the formulation of rules by the Anti-Doping Organization.

changes to the language in order to refer to the organization's name, sport, section numbers, etc.): Articles 1 (Definition of Doping), 2 (Anti-Doping Rule Violations), 3 (Proof of Doping), 9 (Automatic *Disqualification* of Individual Results), 10 (Sanctions on Individuals), 11 (*Consequences* to Teams), 13 (Appeals) with the exception of 13.2.2, 17 (Statute of Limitations) and Definitions.

Anti-doping rules, like competition rules, are sport rules governing the conditions under which sport is played. *Athletes* accept these rules as a condition of participation. Anti-doping rules are not intended to be subject to or limited by the requirements and legal standards applicable to criminal proceedings or employment matters. The policies and minimum standards set forth in the *Code* represent the consensus of a broad spectrum of stakeholders with an interest in fair sport and should be respected by all courts and adjudicating bodies.

Participants shall be bound to comply with the anti-doping rules adopted in conformance with the *Code* by the relevant *Anti-Doping Organizations*. Each *Signatory* shall establish rules and procedures to ensure that all *Participants* under the authority of the *Signatory* and its member organizations are informed of and agree to be bound by anti-doping rules in force of the relevant *Anti-Doping Organizations*.

Participants Comment: *By their participation in sport, Athletes are bound by the competitive rules of their sport. In the same manner, Athletes and Athlete Support Personnel should be bound by anti-doping rules based on Article 2 of the Code by virtue of their agreements for membership, accreditation, or participation in sports organizations or sports events subject to the Code. Each Signatory, however, shall take the necessary steps to ensure that all Athletes and Athlete Support Personnel within its authority are bound by the relevant Anti-Doping Organization's anti-doping rules.*

ARTICLE 1: DEFINITION OF DOPING

Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in Article 2.1 through Article 2.8 of the *Code*.

ARTICLE 2: ANTI-DOPING RULE VIOLATIONS

The following constitute anti-doping rule violations:

2.1 The presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's* bodily *Specimen*.

2.1.1 It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body. *Athletes* are responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in their bodily *Specimens*. Accordingly, it is not necessary that intent, fault, negligence or knowing *Use* on the *Athlete's* part be demonstrated in order to establish an anti-doping violation under Article 2.1.

2 Comment: *The purpose of Article 2 is to specify the circumstances and conduct which constitute violations of anti-doping rules. Hearings in doping cases will proceed based on the assertion that one or more of these specific rules have been violated. Most of the circumstances and conduct on this list of violations can be found in some form in the OMADC or other existing anti-doping rules.*

2.1.1 Comment: *For purposes of anti-doping violations involving the presence of a Prohibited Substance (or its Metabolites or Markers), the Code adopts the rule of strict liability which is found in the OMADC and the vast majority of existing anti-doping rules. Under the strict liability principle, an anti-doping rule violation occurs whenever a Prohibited Substance is found in an Athlete's bodily Specimen. The violation occurs whether or not the Athlete intentionally or unintentionally used a Prohibited Substance or was negligent or otherwise at fault. If the positive Sample came from an In-Competition test, then the results of that Competition are automatically invalidated (Article 9 (Automatic Disqualification of Individual Results)). However, the Athlete then has the possibility to avoid or reduce sanctions if the Athlete can demonstrate that he or she was not at fault or significant fault. (Article 10.5 (Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances).*

The strict liability rule for the finding of a Prohibited Substance in an Athlete's Specimen, with a possibility that sanctions may be modified based on specified criteria, provides a reasonable balance between effective anti-doping

2.1.2 Excepting those substances for which a quantitative reporting threshold is specifically identified in the *Prohibited List*, the detected presence of any quantity of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample* shall constitute an anti-doping rule violation.

2.1.3 As an exception to the general rule of Article 2.1, the *Prohibited List* may establish special criteria for the evaluation of *Prohibited Substances* that can also be produced endogenously.

enforcement for the benefit of all "clean" Athletes and fairness in the exceptional circumstance where a Prohibited Substance entered an Athlete's system through no fault or negligence on the Athlete's part. It is important to emphasize that while the determination of whether the anti-doping rule has been violated is based on strict liability, the imposition of a fixed period of Ineligibility is not automatic.

The rationale for the strict liability rule was well stated by the Court of Arbitration for Sport in the case of Quigley v. UIT.

"It is true that a strict liability test is likely in some sense to be unfair in an individual case, such as that of Q., where the Athlete may have taken medication as the result of mislabeling or faulty advice for which he or she is not responsible - particularly in the circumstances of sudden illness in a foreign country. But it is also in some sense "unfair" for an Athlete to get food poisoning on the eve of an important competition. Yet in neither case will the rules of the competition be altered to undo the unfairness. Just as the competition will not be postponed to await the Athlete's recovery, so the prohibition of banned substances will not be lifted in recognition of its accidental absorption. The vicissitudes of competition, like those of life generally, may create many types of unfairness, whether by accident or the negligence of unaccountable Persons, which the law cannot repair.

Furthermore, it appears to be a laudable policy objective not to repair an accidental unfairness to an individual by creating an intentional unfairness to the whole body of other competitors. This is what would happen if banned performance-enhancing substances were tolerated when absorbed inadvertently. Moreover, it is likely that even intentional abuse would in many cases escape sanction for lack of proof of guilty intent. And it is certain that a requirement of intent would invite costly litigation that may well cripple federations - particularly those run on modest budgets - in their fight against doping."

2.1.3 Comment: *For example, the Prohibited List might provide that a T/E ratio greater than 6:1 is doping unless a longitudinal analysis of prior or subsequent test results by the Anti-Doping Organization demonstrates a naturally elevated ratio or the Athlete otherwise establishes that the elevated ratio is the result of a physiological or pathological condition.*

2.2 *Use* or *Attempted Use* of a *Prohibited Substance* or a *Prohibited Method.*

2.2.1 The success or failure of the *Use* of a *Prohibited Substance* or *Prohibited Method* is not material. It is sufficient that the *Prohibited Substance* or *Prohibited Method* was *Used* or *Attempted* to be *Used* for an anti-doping rule violation to be committed.

2.3 Refusing, or failing without compelling justification, to submit to *Sample* collection after notification as authorized in applicable anti-doping rules or otherwise evading *Sample* collection.

2.2.1 Comment: *The prohibition against "Use" has been expanded from the text in the OMADC to include Prohibited Substances as well as Prohibited Methods. With this inclusion there is no need to specifically delineate "admission of Use" as a separate anti-doping rule violation. "Use" can be proved, for example, through admissions, third party testimony or other evidence.*

Demonstrating the "Attempted Use" of a Prohibited Substance requires proof of intent on the Athlete's part. The fact that intent may be required to prove this particular anti-doping rule violation does not undermine the strict liability principle established for violations of Article 2.1 and Use of a Prohibited Substance or Prohibited Method.

An Athlete's Out-of-Competition Use of a Prohibited Substance that is not prohibited Out-of-Competition would not constitute an anti-doping rule violation.

2.3 Comment: *Failure or refusal to submit to Sample collection after notification is prohibited in almost all existing anti-doping rules. This Article expands the typical rule to include "otherwise evading Sample collection" as prohibited conduct. Thus, for example, it would be an anti-doping rule violation if it were established that an Athlete was hiding from a Doping Control official who was attempting to conduct a test. A violation of "refusing or failing to submit to Sample collection" may be based on either intentional or negligent conduct of the Athlete, while "evading" Sample collection contemplates intentional conduct by the Athlete.*

2.4 Violation of applicable requirements regarding *Athlete* availability for *Out-of-Competition Testing* including failure to provide required whereabouts information and missed tests which are declared based on reasonable rules.

2.5 *Tampering*, or *Attempting* to tamper, with any part of *Doping Control.*

2.6 *Possession* of *Prohibited Substances* and *Methods:*

2.6.1 *Possession* by an *Athlete* at any time or place of a substance that is prohibited in *Out-of-Competition Testing* or a *Prohibited Method* unless the *Athlete* establishes that the *Possession* is pursuant to a therapeutic use exemption granted in accordance with Article 4.4 (Therapeutic *Use*) or other acceptable justification.

2.6.2 *Possession* of a substance that is prohibited in *Out-of-Competition Testing* or a *Prohibited Method* by *Athlete Support Personnel* in connection with an *Athlete, Competition* or training, unless the *Athlete Support Personnel* establishes that the *Possession* is pursuant to a therapeutic use exemption granted to an *Athlete* in accordance with Article 4.4 (Therapeutic *Use*) or other acceptable justification.

2.4 Comment: *Unannounced Out-of-Competition Testing is at the core of effective Doping Control. Without accurate Athlete location information such Testing is inefficient and sometimes impossible. This Article, which is not typically found in most existing anti-doping rules, requires Athletes that have been identified for Out-of-Competition Testing to be responsible for providing and updating information on their whereabouts so that they can be located for No Advance Notice Out-of-Competition Testing. The "applicable requirements" are set by the Athlete's International Federation and National Anti-Doping Organization in order to allow some flexibility based upon varying circumstances encountered in different sports and countries. A violation of this Article may be based on either intentional or negligent conduct by the Athlete.*

2.5 Comment: *This Article prohibits conduct which subverts the Doping Control process but which would not be included in the typical definition of Prohibited Methods. For example, altering identification numbers on a Doping Control form during Testing or breaking the B Bottle at the time of B Sample analysis.*

2.7 *Trafficking* in any *Prohibited Substance* or *Prohibited Method.*

2.8 Administration or *Attempted* administration of a *Prohibited Substance* or *Prohibited Method* to any *Athlete*, or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any *Attempted* violation.

ARTICLE 3: PROOF OF DOPING

3.1 Burdens and Standards of Proof.

The *Anti-Doping Organization* shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the *Anti-Doping Organization* has established an anti-doping rule violation to the comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where the *Code* places the burden of proof upon the *Athlete* or other *Person* alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

3.2 Methods of Establishing Facts and Presumptions.

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

3.1 Comment: *This standard of proof required to be met by the Anti-Doping Organization is comparable to the standard which is applied in most countries to cases involving professional misconduct. It has also been widely applied by courts and tribunals in doping cases. See, for example, the CAS decision in N., J., Y., W. v. FINA, CAS 98/208, 22 December 1998.*

3.2.1 *WADA*-accredited laboratories are presumed to have conducted *Sample* analysis and custodial procedures in accordance with the *International Standard* for laboratory analysis. The *Athlete* may rebut this presumption by establishing that a departure from the *International Standard* occurred.

If the *Athlete* rebuts the preceding presumption by showing that a departure from the *International Standard* occurred, then the *Anti-Doping Organization* shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding.*

3.2.2 Departures from the *International Standard* for *Testing* which did not cause an *Adverse Analytical Finding* or other anti-doping rule violation shall not invalidate such results. If the *Athlete* establishes that departures from the *International Standard* occurred during *Testing* then the *Anti-Doping Organization* shall have the burden to establish that such departures did not cause the *Adverse Analytical Finding* or the factual basis for the anti-doping rule violation.

3.2.1 Comment: *The burden is on the Athlete to establish, by a preponderance of the evidence, a departure from the International Standard. If the Athlete does so, the burden shifts to the Anti-Doping Organization to prove to the comfortable satisfaction of the hearing body that the departure did not change the test result.*

ARTICLE 4: THE PROHIBITED LIST

4.1 Publication and Revision of the *Prohibited List.*

WADA shall, as often as necessary and no less often than annually, publish the *Prohibited List* as an *International Standard.* The proposed content of the *Prohibited List* and all revisions shall be provided in writing promptly to all *Signatories* and governments for comment and consultation. Each annual version of the *Prohibited List* and all revisions shall be distributed promptly by *WADA* to each *Signatory* and government and shall be published on *WADA*'s website, and each *Signatory* shall take appropriate steps to distribute the *Prohibited List* to its members and constituents. The rules of each *Anti-Doping Organization* shall specify that, unless provided otherwise in the *Prohibited List* or a revision, the *Prohibited List* and revisions shall go into effect under the *Anti-Doping Organization's* rules three months after publication of the *Prohibited List* by *WADA* without requiring any further action by the *Anti-Doping Organization.*

4.2 *Prohibited Substances* and *Prohibited Methods* Identified on the *Prohibited List.*

The *Prohibited List* shall identify those *Prohibited Substances* and *Prohibited Methods* which are prohibited as doping at all times (both In-*Competition* and *Out-of-Competition*) because of their potential to enhance performance in future *Competitions* or their masking potential and those substances and methods which are prohibited *In-Competition* only. Upon the recommendation of an International Federation, the *Prohibited List* may be expanded by *WADA* for that particular sport. *Prohibited Substances* and *Prohibited Methods* may be included in the *Prohibited List* by general category (e.g., anabolic agents) or by specific reference to a particular substance or method.

4.3 Criteria for Including Substances and Methods on the *Prohibited List.*

WADA shall consider the following criteria in deciding whether to include a substance or method on the *Prohibited List.*

4.3.1 A substance or method shall be considered for inclusion on the *Prohibited List* if *WADA* determines that the substance or method meets any two of the following three criteria:

4.3.1.1 Medical or other scientific evidence, pharmacological effect or experience that the substance or method has the potential to enhance or enhances sport performance;

4.1 Comment: *The Prohibited List will be revised and published on an expedited basis whenever the need arises. However, for the sake of predictability, a new list will be published every year whether or not changes have been made. The virtue of the IOC practice of publishing a new list every January is that it avoids confusion over which list is the most current. To address this issue, WADA will always have the most current Prohibited List published on its website.*

It is anticipated that revised anti-doping rules adopted by Anti-Doping Organizations pursuant to the Code will not go into effect until January 1, 2004 with the publication of the first Prohibited List adopted by WADA. The OMADC will continue to be applicable until the Code is accepted by the International Olympic Committee.

4.2 Comment: *There will be one Prohibited List. The substances which are prohibited at all times would include masking agents and those substances which, when used in training, may have long term performance enhancing effects such as anabolics. All substances and methods on the Prohibited List are prohibited In-Competition. This distinction between what is tested for In-Competition and what is tested for Out-of-Competition is carried over from the OMADC. There will be only one document called the "Prohibited List." WADA may add additional substances or methods to the Prohibited List for particular sports (e.g. the inclusion of beta-blockers for shooting) but this will also be reflected on the single Prohibited List. Having all Prohibited Substances on a single list will avoid some of the current confusion related to identifying which substances are prohibited in which sports. Individual sports are not permitted to seek exemption from the basic list of Prohibited Substances (e.g. eliminating anabolics from the Prohibited List for "mind sports"). The premise of this decision is that there are certain basic doping agents which anyone who chooses to call himself or herself an Athlete should not take.*

4.3.1.2 Medical or other scientific evidence, pharmacological effect, or experience that the *Use* of the substance or method represents an actual or potential health risk to the *Athlete*;

4.3.1.3 *WADA*'s determination that the *Use* of the substance or method violates the spirit of sport described in the Introduction to the *Code*.

4.3.2 A substance or method shall also be included on the *Prohibited List* if *WADA* determines there is medical or other scientific evidence, pharmacological effect or experience that the substance or method has the potential to mask the *Use* of other *Prohibited Substances* and *Prohibited Methods*.

4.3.2 ***Comment:*** *A substance shall be considered for inclusion on the Prohibited List if the substance is a masking agent or meets two of the following three criteria: (1) it has the potential to enhance or enhances sport performance; (2) it represents a potential or actual health risk; or (3) it is contrary to the spirit of sport. None of the three criteria alone is a sufficient basis for adding a substance to the Prohibited List. Using the potential to enhance performance as the sole criteria would include, for example, physical and mental training, red meat, carbohydrate loading and training at altitude. Risk of harm would include smoking. Requiring all three criteria would also be unsatisfactory. For example the use of genetic transfer technology to dramatically enhance sport performance should be prohibited as contrary to the spirit of sport even if it is not harmful. Similarly, the potentially unhealthy abuse of certain substances without therapeutic justification based on the mistaken belief they enhance performance is certainly contrary to the spirit of sport regardless of whether the expectation of performance enhancement is realistic.*

4.3.3 *WADA's* determination of the *Prohibited Substances* and *Prohibited Methods* that will be included on the *Prohibited List* shall be final and shall not be subject to challenge by an *Athlete* or other *Person* based on an argument that the substance or method was not a masking agent or did not have the potential to enhance performance, represent a health risk, or violate the spirit of sport.

4.4 Therapeutic *Use*

WADA shall adopt an *International Standard* for the process of granting therapeutic use exemptions.

Each International Federation shall ensure, for *International-Level Athletes* or any other *Athlete* who is

4.3.3 ***Comment:*** *The question of whether a substance meets the criteria in Article 4.3 (Criteria for Including Substances and Methods on the Prohibited List) in a particular case cannot be raised as a defense to an anti-doping rule violation. For example, it cannot be argued that the Prohibited Substance detected would not have been performance enhancing in that particular sport. Rather, doping occurs when a substance on the Prohibited List is found in an Athlete's bodily Specimen. The same principle is found in the OMADC.*

4.4 ***Comment:*** *It is important that the processes for granting therapeutic use exemptions become more harmonized. Athletes who use medically prescribed Prohibited Substances may be subject to sanctioning unless they have previously obtained a therapeutic use exemption. However, currently many sporting bodies have no rules permitting therapeutic use exemptions; others follow unwritten policies; and only a few have written policies incorporated into their anti-doping rules. This Article seeks to harmonize the basis upon which therapeutic use exemptions will be granted and gives responsibility for granting or denying exemptions to the International Federations for International-Level Athletes and to the National Anti-Doping Organizations for national-level Athletes (that are not also International-Level Athletes) and other Athletes subject to Doping Control under the Code.*

Examples of commonly prescribed Prohibited Substances which might be specifically addressed in the International Standard for therapeutic use exemptions are medications prescribed for acute severe asthma and inflammatory bowel disease. When a therapeutic use exemption has been denied or granted in contravention of the International Standard, that decision may be submitted to WADA for review as provided in the International Standard and thereafter appealed as provided in Article 13.3 (Appeals). If the granting of a therapeutic use exemption is reversed, the reversal shall not apply retroactively and shall not disqualify the Athlete's results during the time that the therapeutic use exemption was in effect.

entered in an *International Event*, that a process is in place whereby *Athletes* with documented medical conditions requiring the *Use* of a *Prohibited Substance* or a *Prohibited Method* may request a therapeutic use exemption. Each *National Anti-Doping Organization* shall ensure, for all *Athletes* within its jurisdiction that are not *International-Level Athletes*, that a process is in place whereby *Athletes* with documented medical conditions requiring the *Use* of a *Prohibited Substance* or a *Prohibited Method* may request a therapeutic use exemption. Such requests shall be evaluated in accordance with the *International Standard* on therapeutic use. International Federations and *National Anti-Doping Organizations* shall promptly report to *WADA* the granting of therapeutic use exemptions to any *International-Level Athlete* or national-level *Athlete* that is included in his or her *National Anti-Doping Organization's Registered Testing Pool*.

WADA, on its own initiative, may review the granting of a therapeutic use exemption to any *International-Level Athlete* or national-level *Athlete* that is included in his or her *National Anti-Doping Organization's Registered Testing Pool*. Further, upon the request of any such *Athlete* that has been denied a therapeutic use exemption, *WADA* may review such denial. If *WADA* determines that such granting or denial of a therapeutic use exemption did not comply with the *International Standard* for therapeutic use exemptions, *WADA* may reverse the decision.

4.5 Monitoring Program

WADA, in consultation with other *Signatories* and governments, shall establish a monitoring program regarding substances which are not on the *Prohibited List*, but which *WADA* wishes to monitor in order to detect patterns of misuse in sport. *WADA* shall publish, in advance of any *Testing*, the substances that will be monitored. Laboratories will report the instances of reported *Use* or detected presence of these substances to

WADA periodically on an aggregate basis by sport and whether the *Samples* were collected *In-Competition* or *Out-of-Competition*. Such reports shall not contain additional information regarding specific *Samples*. *WADA* shall make available to International Federations and *National Anti-Doping Organizations*, on at least an annual basis, aggregate statistical information by sport regarding the additional substances. *WADA* shall implement measures to ensure that strict anonymity of individual *Athletes* is maintained with respect to such reports. The reported use or detected presence of the monitored substances shall not constitute a doping violation.

ARTICLE 5: *TESTING*

5.1 Test Distribution Planning. *Anti-Doping Organizations* conducting *Testing* shall in coordination with other *Anti-Doping Organizations* conducting *Testing* on the same *Athlete* pool:

5.1.1 Plan and implement an effective number of *In-Competition* and *Out-of-Competition* tests. Each International Federation shall establish a *Registered Testing Pool* for *International-Level Athletes* in its sport, and each *National Anti-Doping Organization* shall establish a national *Registered Testing Pool* for *Athletes* in its country. The national-level pool shall include *International-Level Athletes* from that country as well as other national-level *Athletes*. Each International Federation and *National Anti-Doping Organization* shall plan and conduct *In-Competition* and *Out-of-Competition Testing* on its *Registered Testing Pool*.

5.1.2 Make *No Advance Notice Testing* a priority.

5.1.3 Conduct *Target Testing*.

5.1.3 Comment: *Target Testing is specified because random Testing, or even weighted random Testing, does not ensure that all of the appropriate Athletes will be tested. (For example: world class Athletes, Athletes whose*

5.2 Standards for *Testing*

Anti-Doping Organizations conducting *Testing* shall conduct such *Testing* in conformity with the *International Standard* for *Testing*.

ARTICLE 6: ANALYSIS OF *SAMPLES*

Doping Control Samples shall be analyzed in accordance with the following principles:

6.1 *Use* of Approved Laboratories

Doping Control Samples shall be analyzed only in *WADA*-accredited laboratories or as otherwise approved by *WADA*. The choice of the *WADA*-accredited laboratory (or other method approved by *WADA*) used for the *Sample* analysis shall be determined exclusively by the *Anti-Doping Organization* responsible for results management.

6.2 Substances Subject to Detection

Doping Control Samples shall be analyzed to detect *Prohibited Substances* and *Prohibited Methods* identified on the *Prohibited List* and other substances as may be directed by *WADA* pursuant to Article 4.5 (Monitoring Program).

6.3 Research on *Samples*

No *Sample* may be used for any purpose other than the detection of substances (or classes of substances) or methods on the *Prohibited List*, or as otherwise identified by *WADA* pursuant to Article 4.5 (Monitoring Program), without the *Athlete's* written consent.

performances have dramatically improved over a short period of time. Athletes whose coaches have had other Athletes test positive, etc.).

Obviously, Target Testing must not be used for any purpose other than legitimate Doping Control. The Code makes it clear that Athletes have no right to expect that they will be tested only on a random basis. Similarly, it does not impose any reasonable suspicion or probable cause requirement for Target Testing.

5.2 Comment: *The required methods and processes for the various types of In-Competition and Out-of-Competition Testing will be described in greater detail in the International Standard for Testing.*

6.1 Comment: *The phrase "or other method approved by WADA" is intended to cover, for example, mobile blood Testing procedures which WADA has reviewed and considers to be reliable.*

6.4 Standards for *Sample* Analysis and Reporting

Laboratories shall analyze *Doping Control Samples* and report results in conformity with the *International Standard* for laboratory analysis.

ARTICLE 7: RESULTS MANAGEMENT

Each *Anti-Doping Organization* conducting results management shall establish a process for the pre-hearing administration of potential anti-doping rule violations that respects the following principles:

7.1 Initial Review Regarding *Adverse Analytical Findings*

Upon receipt of an *A Sample Adverse Analytical Finding*, the *Anti-Doping Organization* responsible for results management shall conduct a review to determine whether: (a) an applicable therapeutic use exemption has been granted, or (b) there is any apparent departure from the *International Standards* for *Testing* or laboratory analysis that undermines the validity of the *Adverse Analytical Finding*.

7.2 Notification After Initial Review

If the initial review under Article 7.1 does not reveal an applicable therapeutic use exemption or departure that undermines the validity of the *Adverse Analytical Finding*,

7 Comment: *Various of the Signatories have created their own approaches to results management for Adverse Analytical Findings. While the various approaches have not been entirely uniform, many have proven to be fair and effective systems for results management. The Code does not supplant each of the Signatories' results management systems. This Article does, however, specify basic principles in order to ensure the fundamental fairness of the results management process which must be observed by each Signatory. The specific anti-doping rules of each Signatory shall be consistent with these basic principles.*

7.2 Comment: *The Athlete has a right to request a prompt B Sample analysis regardless of whether follow-up investigation may be required under Articles 7.3 or 7.4.*

the *Anti-Doping Organization* shall promptly notify the *Athlete*, in the manner set out in its rules, of: (a) the *Adverse Analytical Finding*; (b) the anti-doping rule violated, or, in a case under Article 7.3, a description of the additional investigation that will be conducted as to whether there is an anti-doping rule violation; (c) the *Athlete's* right to promptly request the analysis of the B *Sample* or, failing such request, that the B *Sample* analysis may be deemed waived; (d) the right of the *Athlete* and/or the *Athlete's* representative to attend the B *Sample* opening and analysis if such analysis is requested; and (e) the *Athlete's* right to request copies of the A and B *Sample* laboratory documentation package which includes information as required by the *International Standard* for laboratory analysis.

7.3 Further Review of *Adverse Analytical Finding* Where Required by *Prohibited List*

The *Anti-Doping Organization* or other reviewing body established by such organization shall also conduct any follow-up investigation as may be required by the *Prohibited List*. Upon completion of such follow-up investigation, the *Anti-Doping Organization* shall promptly notify the *Athlete* regarding the results of the follow-up investigation and whether or not the *Anti-Doping Organization* asserts that an anti-doping rule was violated.

7.4 Review of Other Anti-Doping Rule Violations

The *Anti-Doping Organization* or other reviewing body established by such organization shall conduct any follow-up investigation as may be required under applicable anti-doping policies and rules adopted pursuant to the *Code* or which the *Anti-Doping Organization* otherwise considers appropriate. The *Anti-Doping Organization* shall promptly give the *Athlete* or other *Person* subject to sanction notice,

7.4 Comment: *As an example, an International Federation typically would notify the Athlete through the Athlete's national sports federation.*

in the manner set out in its rules, of the anti-doping rule which appears to have been violated, and the basis of the violation.

7.5 Principles Applicable to *Provisional Suspensions*

A *Signatory* may adopt rules, applicable to any *Event* for which the *Signatory* is the ruling body or for any team selection process for which the *Signatory* is responsible, permitting *Provisional Suspensions* to be imposed after the review and notification described in Articles 7.1 and 7.2 but prior to a final hearing as described in Article 8 (Right to a Fair Hearing). Provided, however, that a *Provisional Suspension* may not be imposed unless the *Athlete* is given either: (a) an opportunity for a *Provisional Hearing* either before imposition of the *Provisional Suspension* or on a timely basis after imposition of the *Provisional Suspension*; or (b) an opportunity for an expedited hearing in accordance with Article 8 (Right to a Fair Hearing) on a timely basis after imposition of a *Provisional Suspension*.

If a *Provisional Suspension* is imposed based on an A *Sample Adverse Analytical Finding* and a subsequent B *Sample* analysis does not confirm the A *Sample* analysis, then the *Athlete* shall not be subject to any further disciplinary action and any sanction previously imposed shall be rescinded. In circumstances where the *Athlete* or the *Athlete's* team has been removed from a *Competition* and the subsequent B *Sample* analysis does not confirm the A *Sample* finding, if, without otherwise affecting the *Competition*, it is still possible for the *Athlete* or team to be reinserted, the *Athlete* or team may continue to take part in the *Competition*.

7.5 Comment: *This Article continues to permit the possibility of a Provisional Suspension before a final decision at a hearing under Article 8 (Right to a Fair Hearing). Provisional Suspensions have been authorized in the OMADC and by the rules of many International Federations. However, before a Provisional Suspension can be unilaterally imposed by an Anti-Doping Organization, the internal review specified in the Code must first be completed. In addition, a Signatory imposing a Provisional Suspension is required to give the Athlete an opportunity for a Provisional Hearing*

ARTICLE 8: RIGHT TO A FAIR HEARING

Each *Anti-Doping Organization* with responsibility for results management shall provide a hearing process for any *Person* who is asserted to have committed an anti-doping rule violation. Such hearing process shall address whether an anti-doping violation was committed and, if so, the appropriate *Consequences*. The hearing process shall respect the following principles:

- a timely hearing;
- fair and impartial hearing body;
- the right to be represented by counsel at the *Person's* own expense;
- the right to be fairly and timely informed of the asserted anti-doping rule violation;
- the right to respond to the asserted anti-doping rule violation and resulting *Consequences;*

either before or promptly after the imposition of the Provisional Suspension, or an expedited final hearing under Article 8 promptly after imposition of the Provisional Suspension. The Athlete has a right to appeal under Article 13.2. As an alternative to the process for imposing a Provisional Suspension under this Article, the Anti-Doping Organization may always elect to forego a Provisional Suspension and proceed directly to the final hearing utilizing an expedited process under Article 8.

In the rare circumstance where the B Sample analysis does not confirm the A Sample finding, the Athlete that had been provisionally suspended will be allowed, where circumstances permit, to participate in subsequent Competitions during the Event. Similarly, depending upon the relevant rules of the International Federation in a Team Sport, if the team is still in Competition, the Athlete may be able to take part in future Competitions.

***8 Comment:** This Article contains basic principles relative to ensuring a fair hearing for Persons asserted to have violated anti-doping rules. This Article is not intended to supplant each Signatory's own rules for hearings but rather to ensure that each Signatory provides a hearing process consistent with these principles.*

- the right of each party to present evidence, including the right to call and question witnesses (subject to the hearing body's discretion to accept testimony by telephone or written submission);
- the *Person's* right to an interpreter at the hearing, with the hearing body to determine the identity, and responsibility for the cost, of the interpreter; and
- a timely, written, reasoned decision;

Hearings held in connection with *Events* may be conducted by an expedited process as permitted by the rules of the relevant *Anti-Doping Organization* and the hearing body.

ARTICLE 9: AUTOMATIC *DISQUALIFICATION* OF INDIVIDUAL RESULTS

An anti-doping rule violation in connection with an *In-Competition* test automatically leads to *Disqualification* of the individual result obtained in that *Competition* with all resulting consequences, including forfeiture of any medals, points and prizes.

The reference to CAS as an appellate body in Article 13 does not prevent a Signatory from also specifying CAS as the initial hearing body.

For example a hearing could be expedited on the eve of a major Event where the resolution of the anti-doping rule violation is necessary to determine the Athlete's eligibility to participate in the Event or during an Event where the resolution of the case will affect the validity of the Athlete's results or continued participation in the Event.

***9 Comment:** This principle is found in the OMADC. When an Athlete wins a gold medal with a Prohibited Substance in his or her system, that is unfair to the other Athletes in that Competition regardless of whether the gold medallist was at fault in any way. Only a "clean" Athlete should be allowed to benefit from his or her competitive results.*

For Team Sports, see Article 11 (Consequences to Teams).

ARTICLE 10: SANCTIONS ON INDIVIDUALS

10.1 *Disqualification* of Results in *Event* During which an Anti-Doping Rule Violation Occurs

An anti-doping rule violation occurring during or in connection with an *Event* may, upon the decision of the ruling body of the *Event*, lead to *Disqualification* of all of the *Athlete's* individual results obtained in that *Event* with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.

10.1.1 If the *Athlete* establishes that he or she bears *No Fault or Negligence* for the violation, the *Athlete's* individual results in the other *Competitions* shall not be *Disqualified* unless the *Athlete's* results in *Competitions* other than the *Competition* in which the anti-doping rule violation occurred were likely to have been affected by the *Athlete's* anti-doping rule violation.

10.2 *Imposition* of *Ineligibility* for *Prohibited Substances* and *Prohibited Methods*

Except for the specified substances identified in Article 10.3, the period of *Ineligibility* imposed for a violation of Articles 2.1 (presence of *Prohibited Substance* or its *Metabolites* or *Markers*), 2.2 (*Use* or *Attempted Use* of *Prohibited Substance* or *Prohibited Method*) and 2.6 (*Possession* of *Prohibited Substances* and *Methods*) shall be:

- First violation: Two (2) years' *Ineligibility*.
- Second violation: Lifetime *Ineligibility*.

However, the *Athlete* or other *Person* shall have the opportunity in each case, before a period of *Ineligibility* is imposed, to establish the basis for eliminating or reducing this sanction as provided in Article 10.5

10.3 Specified Substances

The *Prohibited List* may identify specified substances which are particularly susceptible to unintentional anti-doping rules violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents. Where an *Athlete* can establish that the *Use* of such a specified

10.1 Comment: *Whereas Article 9 (Automatic Disqualification of Individual Results) Disqualifies the result in a single Competition in which the Athlete tested positive (e.g., the 100 meter backstroke), this Article may lead to Disqualification of all results in all races during the Event (e.g., the FINA World Championships).*

Factors to be included in considering whether to Disqualify other results in an Event might include, for example, the severity of the Athlete's anti-doping rule violation and whether the Athlete tested negative in the other Competitions.

10.2 Comment: *Harmonization of sanctions has been one of the most discussed and debated areas of anti-doping. Arguments against requiring harmonization of sanctions are based on differences between sports including for example the following: in some sports the Athletes are professionals making a sizable income from the sport and in others the Athletes are true amateurs; in those sports where an Athlete's career is short (e.g. artistic gymnastics) a two year Disqualification has a much more significant effect on the Athlete than in sports where careers are traditionally much longer (e.g. equestrian and shooting); in individual sports, the Athlete is better able to maintain competitive skills through solitary practice during Disqualification than in other sports where practice as part of a team is more important. A primary argument in favor of harmonization is that it is simply not right that two Athletes from the same country who test positive for the same Prohibited Substance under similar circumstances should receive different sanctions only because they participate in different sports. In addition, flexibility in sanctioning has often been viewed as an unacceptable opportunity for some sporting bodies to be more lenient with dopers. The lack of harmonization of sanctions has also frequently been the source of jurisdictional conflicts between International Federations and National Anti-Doping Organizations.*

The consensus of the World Conference on Doping in Sport held in Lausanne in February 1999 supported a two year period of Ineligibility for a first serious anti-doping rule violation followed with a lifetime ban for a second violation. This consensus was reflected in the OMADC.

10.3 Comment: *This principle is carried over from the OMADC and allows, for example, some flexibility in disciplining Athletes who test positive as a result of the inadvertent use of a cold medicine containing a prohibited stimulant. "Reduction" of a sanction under Article 10.5.2 applies only to a second or third violation because the sanction for a first*

substance was not intended to enhance sport performance, the period of *Ineligibility* found in Article 10.2 shall be replaced with the following:

- *First violation:* At a minimum, a warning and reprimand and no period of *Ineligibility* from future *Events*, and at a maximum, one (1) year's *Ineligibility*.
- *Second violation:* Two (2) years' *Ineligibility*.
- *Third violation:* Lifetime *Ineligibility*.

However, the *Athlete* or other *Person* shall have the opportunity in each case, before a period of *Ineligibility* is imposed, to establish the basis for eliminating or reducing (in the case of a second or third violation) this sanction as provided in Article 10.5.

10.4 *Ineligibility* for Other Anti-Doping Rule Violations

The period of *Ineligibility* for other anti-doping rule violations shall be:

10.4.1 For violations of Article 2.3 (refusing or failing to submit to *Sample* collection) or Article 2.5 (*Tampering* with *Doping Control*), the *Ineligibility* periods set forth in Article 10.2 shall apply.

10.4.2 For violations of Articles 2.7 (*Trafficking*) or 2.8 (administration of *Prohibited Substance* or *Prohibited Method*), the period of *Ineligibility* imposed shall be a minimum of four (4) years up to

violation already builds in sufficient discretion to allow consideration of the Person's degree of fault.

10.4.2 Comment: *Those who are involved in doping Athletes or covering up doping should be subject to sanctions which are more severe than the Athletes who test positive. Since the authority of sport organizations is generally limited to Ineligibility for credentials, membership and other sport benefits, reporting Athlete Support Personnel to competent authorities is an important step in the deterrence of doping.*

lifetime *Ineligibility*. An anti-doping rule violation involving a *Minor* shall be considered a particularly serious violation, and, if committed by *Athlete Support Personnel* for violations other than specified substances referenced in Article 10.3, shall result in lifetime *Ineligibility* for such *Athlete Support Personnel*. In addition, violations of such Articles which also violate non-sporting laws and regulations, may be reported to the competent administrative, professional or judicial authorities.

10.4.3 For violations of Article 2.4 (whereabouts violation or missed test), the period of *Ineligibility* shall be at a minimum 3 months and at a maximum 2 years in accordance with the rules established by the *Anti-Doping Organization* whose test was missed or whereabouts requirement was violated. The period of *Ineligibility* for subsequent violations of Article 2.4 shall be as established in the rules of the *Anti-Doping Organization* whose test was missed or whereabouts requirement was violated.

10.5 Elimination or Reduction of Period of *Ineligibility* Based on Exceptional Circumstances.

10.5.1 *No Fault or Negligence*

If the *Athlete* establishes in an individual case involving an anti-doping rule violation under Article

10.4.3 Comment: *The whereabouts and missed test policies of different Anti-Doping Organizations may vary considerably, particularly at the outset as these policies are being put into place. Thus, considerable flexibility has been provided for sanctioning these anti-doping rule violations. Those Anti-Doping Organizations with more sophisticated policies including built in safeguards, and those organizations with longer track records of Athlete experience with a whereabouts policy, could provide for Ineligibility periods at the longer end of the specified range*

10.5.1 Comment: *Article 10.5.1 applies only to violations under Articles 2.1 and 2.2 (presence and Use of Prohibited Substances) because fault or negligence is already required to establish an anti-doping rule violation under other anti-doping rules.*

2.1 (presence of *Prohibited Substance* or its *Metabolites* or *Markers*) or *Use* of a *Prohibited Substance* or *Prohibited Method* under Article 2.2 that he or she bears *No Fault or Negligence* for the violation, the otherwise applicable period of *Ineligibility* shall be eliminated. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an Athlete's Specimen in violation of Article 2.1 (presence of *Prohibited Substance*), the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* eliminated. In the event this Article is applied and the period of *Ineligibility* otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of *Ineligibility* for multiple violations under Articles 10.2, 10.3 and 10.6.

10.5.2 *No Significant Fault or Negligence*

This Article 10.5.2 applies only to anti-doping rule violations involving Article 2.1 (presence of *Prohibited Substance* or its *Metabolites* or *Markers*), *Use* of a *Prohibited Substance* or

10.5.2 Comment: *The trend in doping cases has been to recognize that there must be some opportunity in the course of the hearing process to consider the unique facts and circumstances of each particular case in imposing sanctions. This principle was accepted at the World Conference on Doping in Sport 1999 and was incorporated into the OMADC which provides that sanctions can be reduced in "exceptional circumstances." The Code also provides for the possible reduction or elimination of the period of Ineligibility in the unique circumstance where the Athlete can establish that he or she had No Fault or Negligence, or No Significant Fault or Negligence, in connection with the violation. This approach is consistent with basic principles of human rights and provides a balance between those Anti-Doping Organizations that argue for a much narrower exception, or none at all, and those that would reduce a two year suspension based on a range of other factors even when the Athlete was admittedly at fault. These Articles apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred.*

Prohibited Method under Article 2.2, failing to submit to *Sample* collection under Article 2.3, or administration of a *Prohibited Substance* or *Prohibited Method* under Article 2.8. If an *Athlete* establishes in an individual case involving such violations that he or she bears *No Significant Fault or Negligence*, then the period of *Ineligibility* may be reduced, but the reduced period of *Ineligibility* may not be less than one-half of the minimum period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this section may be no less than 8 years. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Specimen* in violation of Article 2.1 (presence of *Prohibited Substance*), the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* reduced.

Article 10.5 is meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases.

To illustrate the operation of Article 10.5, an example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a prohibited substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any prohibited substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on No Significant Fault or Negligence. (For example, reduction may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to

10.5.3 *Athlete's* Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations by *Athlete Support Personnel* and Others.

An *Anti-Doping Organization* may also reduce the period of *Ineligibility* in an individual case where the *Athlete* has provided substantial assistance to the *Anti-Doping Organization* which results in the *Anti-Doping Organization* discovering or establishing an anti-doping rule violation by another *Person* involving *Possession* under Article 2.6.2 (*Possession* by *Athlete Support Personnel*), Article 2.7 (*Trafficking*), or Article 2.8 (administration to an *Athlete*). The reduced period of *Ineligibility* may not, however, be less than one-half of the minimum period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this section may be no less than 8 years.

10.6 Rules for Certain Potential Multiple Violations

10.6.1 For purposes of imposing sanctions under Articles 10.2, 10.3 and 10.4, a second anti-doping rule violation may be considered for purposes of imposing sanctions only if the *Anti-Doping Organization* can establish that the *Athlete* or other *Person* committed the second anti-doping rule violation after the *Athlete* or other *Person* received notice, or after the *Anti-Doping Organization* made a reasonable *Attempt* to give notice, of the first anti-doping rule violation; if the *Anti-Doping Organization* cannot establish this, the violations shall be considered as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction.

Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.)

Article 10.5.2 applies only to the identified anti-doping rule violations because these violations may be based on conduct that is not intentional or purposeful. Violations under Article 2.4 (whereabouts information and missed tests) are not included, even though intentional conduct is not required to establish these violations, because the sanction for violations of Article 2.4 (from three months to two years) already builds in sufficient discretion to allow consideration of the Athlete's degree of fault.

10.6.1 Comment: *Under this Article, an Athlete testing positive a second time before notice of the first positive test would only be sanctioned on the basis of a single anti-doping rule violation.*

10.6.2 Where an *Athlete*, based on the same *Doping Control*, is found to have committed an anti-doping rule violation involving both a specified substance under Article 10.3 and another *Prohibited Substance* or *Prohibited Method*, the *Athlete* shall be considered to have committed a single anti-doping rule violation, but the sanction imposed shall be based on the *Prohibited Substance* or *Prohibited Method* that carries the most severe sanction.

10.6.3 Where an *Athlete* is found to have committed two separate anti-doping rule violations, one involving a specified substance governed by the sanctions set forth in Article 10.3 (Specified Substances) and the

10.6.3 Comment: *Article 10.6.3 deals with the situation where an Athlete commits two separate anti-doping rule violations, but one of the violations involves a specified substance governed by the lesser sanctions of Article 10.3. Without this Article in the Code, the second offense arguably could be governed by: the sanction applicable to a second violation for the Prohibited Substance involved in the second violation, the sanction applicable to a second offense for the substance involved in the first violation, or a combination of the sanctions applicable to the two offenses. This Article imposes a combined sanction calculated by adding together the sanctions for a first offense under 10.2 (two years) and a first offense under 10.3 (up to one year). This provides the same sanction to the Athlete that commits a first violation under 10.2 followed by a second violation involving a specified substance, and the Athlete that commits a first violation involving a specified substance followed by a second violation under 10.2. In both cases, the sanction shall be from two years to three years' Ineligibility.*

other involving a *Prohibited Substance* or *Prohibited Method* governed by the sanctions set forth in Article 10.2 or a violation governed by the sanctions in Article 10.4.1, the period of *Ineligibility* imposed for the second offense shall be at a minimum two years' *Ineligibility* and at a maximum three years' *Ineligibility*. Any *Athlete* found to have committed a third anti-doping rule violation involving any combination of specified substances under Article 10.3 and any other anti-doping rule violation under 10.2 or 10.4.1 shall receive a sanction of lifetime *Ineligibility*.

10.7 *Disqualification* of Results in *Competitions* Subsequent to *Sample* Collection

In addition to the automatic *Disqualification* of the results in the *Competition* which produced the positive *Sample* under Article 9 (Automatic *Disqualification* of Individual Results), all other competitive results obtained from the date a positive *Sample* was collected (whether *In-Competition* or *Out-of-Competition*), or other doping violation occurred, through the commencement of any *Provisional Suspension* or *Ineligibility* period, shall, unless fairness requires otherwise, be *Disqualified* with all of the resulting consequences including forfeiture of any medals, points and prizes.

10.8 Commencement of *Ineligibility* Period

The period of *Ineligibility* shall start on the date of the hearing decision providing for *Ineligibility* or, if the hearing is waived, on the date *Ineligibility* is accepted or otherwise imposed. Any period of *Provisional Suspension* (whether imposed or voluntarily accepted) shall be credited against

10.8 Comment: *Currently, many Anti-Doping Organizations start the two-year period of Ineligibility at the time a hearing decision is rendered. Those Anti-Doping Organizations also frequently invalidate results retroactively to the date a positive Sample was collected. Other Anti-Doping Organizations simply start the two-year suspension on the date the*

the total period of *Ineligibility* to be served. Where required by fairness, such as delays in the hearing process or other aspects of *Doping Control* not attributable to the *Athlete*, the body imposing the sanction may start the period of *Ineligibility* at an earlier date commencing as early as the date of *Sample* collection.

10.9 Status During *Ineligibility*

No *Person* who has been declared *Ineligible* may, during the period of *Ineligibility*, participate in any capacity in a *Competition* or activity (other than authorized anti-doping education or rehabilitation programs) authorized or organized by any *Signatory* or *Signatory's* member organization. In addition, for any anti-doping rule violation not involving specified substances described in Article 10.3, some or all sport-related financial support or other sport-related benefits received by such *Person* will be withheld by *Signatories*, *Signatories'* member organizations and governments. A *Person* subject to a period of *Ineligibility* longer than four years may, after completing four years of the period of *Ineligibility*,

positive Sample was collected. The OMADC, as clarified by its Explanatory Document, does not mandate either approach. The approach provided in the Code gives Athletes a strong disincentive to drag out the hearing process while they compete in the interim. It also encourages them to voluntarily accept Provisional Suspensions pending a hearing. On the other hand, the body imposing the sanction can start the sanction running before the date the hearing decision is reached so that an Athlete is not penalized by delays in the Doping Control process which are not his or her fault, for example, inordinate delay by the laboratory in reporting a positive test or delays in scheduling the hearing caused by the Anti-Doping Organization.

10.9 Comment: *The rules of some Anti-Doping Organizations only ban an Athlete from "competing" during a period of Ineligibility. For example, an Athlete in those sports could still coach during the Ineligibility period. This Article adopts the position set forth in the OMADC that an Athlete who is made ineligible for doping should not participate in any capacity in an authorized Event or activity during the Ineligibility period. This would preclude, for example, practicing with a national team, or acting as a coach or sport official. Sanctions in one sport will also be recognized by other sports (see Article 15.4). This article would not prohibit the Person from participating in sport on a purely recreational level.*

participate in local sport events in a sport other than the sport in which the *Person* committed the anti-doping rule violation, but only so long as the local sport event is not at a level that could otherwise qualify such *Person* directly or indirectly to compete in (or accumulate points toward) a national championship or *International Event*.

10.10 Reinstatement *Testing*

As a condition to regaining eligibility at the end of a specified period of *Ineligibility*, an *Athlete* must, during any period of *Provisional Suspension* or *Ineligibility*, make him or herself available for *Out-of-Competition Testing* by any *Anti-Doping Organization* having testing jurisdiction, and must, if requested, provide current and accurate whereabouts information. If an *Athlete* subject to a period of *Ineligibility* retires from sport and is removed from *Out-of-Competition Testing* pools and later seeks reinstatement, the *Athlete* shall not be eligible for reinstatement until the *Athlete* has notified relevant *Anti-Doping Organizations* and has been subject to *Out-of-Competition Testing* for a period of time equal to the period of *Ineligibility* remaining as of the date the *Athlete* had retired.

ARTICLE 11 *CONSEQUENCES* TO TEAMS

Where more than one team member in a *Team Sport* has been notified of a possible anti-doping rule violation under Article 7 in connection with an *Event*, the Team shall be subject to *Target Testing* for the *Event*. If more than one team member in a *Team Sport* is found to have committed an anti-doping rule violation during the *Event*, the team may be subject to *Disqualification* or other disciplinary action. In sports which are not *Team Sports* but

10.10 Comment: *On a related issue, the Code does not establish a rule, but rather leaves it to the various Anti-Doping Organizations to establish their own rules, addressing eligibility requirements for Athletes who are not ineligible and retire from sport while included in an Out-of-Competition pool and then seek to return to active participation in sport.*

where awards are given to teams, *Disqualification* or other disciplinary action against the team when one or more team members have committed an anti-doping rule violation shall be as provided in the applicable rules of the International Federation.

ARTICLE 12 SANCTIONS AGAINST SPORTING BODIES

Nothing in this *Code* precludes any *Signatory* or government accepting the *Code* from enforcing its own rules for the purpose of imposing sanctions on another sporting body over which the *Signatory* or government has authority.

ARTICLE 13 APPEALS

13.1 Decisions Subject to Appeal

Decisions made under the *Code* or rules adopted pursuant to the *Code* may be appealed as set forth below in Articles 13.2 through 13.4. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise. Before an appeal is commenced, any post-decision review provided in the *Anti-Doping Organization's* rules must be exhausted, provided that such review respects the principles set forth in Article 13.2.2 below.

13.2 Appeals from Decisions Regarding Anti-Doping Rule Violations, *Consequences*, and *Provisional Suspensions*

A decision that an anti-doping rule violation was committed, a decision imposing *Consequences* for an anti-doping rule violation, a decision that no anti-doping rule violation was committed, a decision that an *Anti-Doping Organization* lacks jurisdiction to rule on an alleged anti-doping rule violation or its *Consequences*,

12 Comment: *This Article makes it clear that the Code does not restrict whatever disciplinary rights between organizations may otherwise exist.*

13.1 Comment: *The comparable OMADC Article is broader in that it provides that any dispute arising out of the application of the OMADC may be appealed to CAS.*

and a decision to impose a *Provisional Suspension* as a result of a *Provisional Hearing* or in violation of Article 7.5 may be appealed exclusively as provided in this Article 13.2.

13.2.1 Appeals Involving *International-Level Athletes*

In cases arising from competition in an *International Event* or in cases involving *International-Level Athletes*, the decision may be appealed exclusively to the Court of Arbitration for Sport ("CAS") in accordance with the provisions applicable before such court.

13.2.2 Appeals Involving National-Level *Athletes*

In cases involving national-level *Athletes*, as defined by each *National Anti-Doping Organization*, that do not have a right to appeal under Article 13.2.1, the decision may be appealed to an independent and impartial body in accordance with rules established by the *National Anti-Doping Organization*. The rules for such appeal shall respect the following principles:

- A timely hearing;
- Fair, impartial and independent hearing body;
- The right to be represented by counsel at the *Person's* own expense; and
- A timely, written, reasoned decision.

13.2.3 *Persons* Entitled to Appeal

In cases under Article 13.2.1, the following parties shall have the right to appeal to CAS: (a) the *Athlete* or other *Person* who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the relevant International Federation and any other *Anti-Doping Organization* under whose rules a sanction could have been imposed; (d) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games; and (e) *WADA*. In cases under Article 13.2.2, the parties having the right to appeal to the national-level reviewing body shall be as provided in the *National Anti-Doping Organization's* rules but, at a minimum, shall include: (a) the *Athlete* or other *Person* who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the relevant International Federation; and (d) *WADA*. For cases under Article 13.2.2, *WADA* and the International Federation shall also have the right to appeal to CAS with respect to the decision of the national-level reviewing body.

Notwithstanding any other provision herein, the only *Person* that may appeal from a *Provisional Suspension* is the *Athlete* or other *Person* upon whom the *Provisional Suspension* is imposed.

13.3 Appeals from Decisions Granting or Denying a Therapeutic *Use* Exemption

Decisions by *WADA* reversing the grant or denial of a therapeutic use exemption may be appealed exclusively to CAS by the *Athlete* or the *Anti-Doping Organization* whose decision was reversed. Decisions by *Anti-Doping Organizations* other than *WADA* denying therapeutic use exemptions, which are not reversed by *WADA*, may be appealed by *International-Level Athletes* to CAS and by

13.2.1 Comment: *CAS decisions are final and binding except for any review required by law applicable to the annulment or enforcement of arbitral awards.*

13.2.2 Comment: *An Anti-Doping Organization may elect to comply with this Article by giving its national-level Athletes the right to appeal directly to CAS.*

other *Athletes* to the national level reviewing body described in Article 13.2.2. If the national level reviewing body reverses the decision to deny a therapeutic use exemption, that decision may be appealed to CAS by *WADA*.

13.4 Appeals from Decisions Imposing *Consequences* under Part Three of the *Code*

With respect to *consequences* imposed under Part Three (Roles and Responsibilities) of the *Code*, the entity upon which *consequences* are imposed under Part Three of the *Code* shall have the right to appeal exclusively to CAS in accordance with the provisions applicable before such court.

13.5 Appeals from Decisions Suspending or Revoking Laboratory Accreditation

Decisions by *WADA* to suspend or revoke a laboratory's *WADA* accreditation may be appealed only by that laboratory with the appeal being exclusively to CAS.

ARTICLE 14 CONFIDENTIALITY AND REPORTING

The *Signatories* agree to the principles of coordination of anti-doping results, public transparency and accountability and respect for the privacy interests of individuals alleged to have violated anti-doping rules as provided below:

14.1 Information Concerning *Adverse Analytical Findings* and Other Potential Anti-Doping Rule Violations

An *Athlete* whose *Sample* has resulted in an *Adverse Analytical Finding*, or an *Athlete* or other *Person* who may

13.5 Comment: *The object of the Code is to have anti-doping matters resolved through fair and transparent internal processes with a final appeal. Anti-doping decisions by Anti-Doping Organizations are made transparent in Article 14. Specified Persons and organizations, including WADA, are then given the opportunity to appeal those decisions. Note, that the definition of interested Persons and organizations with a right to appeal under Article 13 does not include Athletes, or their federations, who might benefit from having another competitor disqualified.*

have violated an anti-doping rule, shall be notified by the *Anti-Doping Organization* with results management responsibility as provided in Article 7 (Results Management). The *Athlete's National Anti-Doping Organization* and International Federation and *WADA* shall also be notified not later than the completion of the process described in Articles 7.1 and 7.2. Notification shall include: the *Athlete's* name, country, sport and discipline within the sport, whether the test was *In-Competition* or *Out-of-Competition*, the date of *Sample* collection and the analytical result reported by the laboratory. The same *Persons* and *Anti-Doping Organizations* shall be regularly updated on the status and findings of any review or proceedings conducted pursuant to Articles 7 (Results Management), 8 (Right to a Fair Hearing) or 13 (Appeals), and, in any case in which the period of *Ineligibility* is eliminated under Article 10.5.1 (*No Fault or Negligence*), or reduced under Article 10.5.2 (*No Significant Fault or Negligence*), shall be provided with a written reasoned decision explaining the basis for the elimination or reduction. The recipient organizations shall not disclose this information beyond those persons within the organization with a need to know until the *Anti-Doping Organization* with results management responsibility has made public disclosure or has failed to make public disclosure as required in Article 14.2 below.

14.2 Public Disclosure

The identity of *Athletes* whose *Samples* have resulted in *Adverse Analytical Findings*, or *Athletes* or other *Persons* who were alleged by an *Anti-Doping Organization* to have violated other anti-doping rules, may be publicly disclosed by the *Anti-doping Organization* with results management responsibility no earlier than completion of the administrative review described in Articles 7.1 and 7.2. No later than twenty days after it has been determined in a hearing in accordance with Article 8 that an anti-doping rule violation has occurred, or such hearing has been

waived, or the assertion of an anti-doping rule violation has not been timely challenged, the *Anti-Doping Organization* responsible for results management must publicly report the disposition of the anti-doping matter.

14.3 *Athlete* Whereabouts Information

Athletes who have been identified by their International Federation or *National Anti-Doping Organization* for inclusion in an *Out-of-Competition Testing* pool shall provide accurate, current location information. The International Federations and *National Anti-Doping Organizations* shall coordinate the identification of *Athletes* and the collecting of current location information and shall submit it to *WADA*. *WADA* shall make this information accessible to other *Anti-Doping Organizations* having authority to test the *Athlete* as provided in Article 15. This information shall be maintained in strict confidence at all times; shall be used exclusively for purposes of planning, coordinating or conducting *Testing*; and shall be destroyed after it is no longer relevant for these purposes.

14.4 Statistical Reporting

Anti-Doping Organizations shall, at least annually, publish publicly a general statistical report of their *Doping Control* activities with a copy provided to *WADA*.

14.5 *Doping Control* Information Clearing House

WADA shall act as a central clearing house for *Doping Control Testing* data and results for *International-Level Athletes* and national-level *Athletes* that have been included in their *National Anti-Doping Organization's Registered Testing Pool*. To facilitate coordinated test distribution planning and to avoid unnecessary duplication in *Testing* by the various *Anti-Doping Organizations*, each *Anti-Doping Organization* shall report all *In-Competition* and *Out-of-Competition* tests on such *Athletes* to the *WADA* clearinghouse as soon as possible after such tests have been conducted. *WADA* shall make this information accessible to the *Athlete*, the *Athlete's* National Federation, *National Olympic Committee* or National

Paralympic Committee, *National Anti-Doping Organization*, International Federation, and the International Olympic Committee or International Paralympic Committee. Private information regarding an *Athlete* shall be maintained by *WADA* in strict confidence. *WADA* shall, at least annually, publish statistical reports summarizing such information.

ARTICLE 15: CLARIFICATION OF *DOPING CONTROL* RESPONSIBILITIES

15.1 *Event Testing*

The collection of *Samples* for *Doping Control* does and should take place at both *International Events* and National *Events*. However, only a single organization should be responsible for initiating and directing *Testing* during an *Event*. At *International Events*, the collection of *Doping Control Samples* shall be initiated and directed by the international organization which is the ruling body for the *Event* (e.g., the IOC for the Olympic Games, the International Federation for a World Championship, and PASO for the Pan American Games). If the international organization decides not to conduct any *Testing* at such an *Event*, the *National Anti-Doping Organization* for the country where the *Event* occurs may, in coordination with and with the approval of the international organization or *WADA*, initiate and conduct such *Testing*. At National *Events*, the collection of *Doping Control Samples* shall be initiated and directed by the designated *National Anti-Doping Organization* of that country.

15 Comment: *To be effective, the anti-doping effort must involve many Anti-Doping Organizations conducting strong programs at both the international and national levels. Rather than limiting the responsibilities of one group in favor of the exclusive competency of the other, the Code manages potential problems associated with overlapping responsibilities, first by creating a much higher level of overall harmonization and second, by establishing rules of precedence and cooperation in specific areas.*

15.1 Comment: *The Anti-Doping Organization "initiating and directing testing" may, if it chooses, enter into agreements with other organizations to which it delegates responsibility for Sample collection or other aspects of the Doping Control process.*

15.2 *Out-of-Competition Testing*

Out-of-Competition Testing is and should be initiated and directed by both international and national organizations. *Out-of-Competition Testing* may be initiated and directed by: (a) *WADA*; (b) the IOC or IPC in connection with the Olympic Games or Paralympic Games; (c) the *Athlete's* International Federation; (d) the *Athlete's National Anti-Doping Organization; or (e)* the *National Anti-Doping Organization* of any country where the *Athlete* is present. *Out-of-Competition Testing* should be coordinated through *WADA* in order to maximize the effectiveness of the combined *Testing* effort and to avoid unnecessary repetitive *Testing* of individual *Athletes*.

15.3 Results Management, Hearings and Sanctions

Except as provided in Article 15.3.1 below, results management and hearings shall be the responsibility of and shall be governed by the procedural rules of the *Anti-Doping Organization* that initiated and directed *Sample* collection (or, if no *Sample* collection is involved, the organization which discovered the violation). Regardless of which organization conducts results management or hearings, the principles set forth in Articles 7 and 8 shall be respected and the rules identified in the Introduction to Part One to be incorporated without substantive change must be followed.

15.3.1 Results management and the conduct of hearings for an anti-doping rule violation arising from a test by, or discovered by, a *National Anti-Doping Organization* involving an *Athlete* that is not a citizen or resident of that country shall be administered as directed by the rules of the applicable International Federation. Results management and the conduct of hearings from a test by the International Olympic Committee, the International Paralympic Committee, or a *Major Event Organization*, shall be referred to the applicable International Federation as far as sanctions beyond *Disqualification* from the *Event* or the results of the *Event*.

15.4 Mutual Recognition

Subject to the right to appeal provided in Article 13, the *Testing*, therapeutic use exemptions and hearing results or other final adjudications of any *Signatory* which are consistent with the *Code* and are within that *Signatory's* authority, shall be recognized and respected by all other *Signatories*. *Signatories* may recognize the same actions of other bodies which have not accepted the *Code* if the rules of those bodies are otherwise consistent with the *Code*.

ARTICLE 16: DOPING CONTROL FOR ANIMALS COMPETING IN SPORT

16.1 In any sport that includes animals in competition, the International Federation for that sport shall establish and implement anti-doping rules for the animals included in that sport. The anti-doping rules shall include a list of *Prohibited Substances*, appropriate *Testing* procedures and a list of approved laboratories for *Sample* analysis.

15.2 Comment: *Additional authority to conduct Testing may be authorized by means of bilateral or multilateral agreements among Signatories and governments.*

15.3 Comment: *In some cases, the procedural rules of the Anti-Doping Organization which initiated and directed the Sample collection may specify that results management will be handled by another organization (e.g., the Athlete's national federation). In such event, it shall be the Anti-Doping Organization's responsibility to confirm that the other organization's rules are consistent with the Code.*

15.3.1 Comment: *No absolute rule is established for managing results and conducting hearings where a National Anti-Doping Organization tests a foreign national athlete over whom it would have had no jurisdiction but for the Athlete's presence in the National Anti-Doping Organization's country. Under this Article, it is left to the International Federation to determine under its own rules whether, for example, management of the case should be referred to the Athlete's National Anti-Doping Organization, remain with the Anti-Doping Organization that collected the Sample, or be taken over by the International Federation.*

16.2 With respect to determining anti-doping rule violations, results management, fair hearings, *Consequences*, and appeals for animals involved in sport, the International Federation for that sport shall establish and implement rules that are generally consistent with Articles 1, 2, 3, 9, 10, 11, 13 and 17 of the *Code*.

ARTICLE 17: STATUTE OF LIMITATIONS

No action may be commenced against an *Athlete* or other *Person* for a violation of an anti-doping rule contained in the *Code* unless such action is commenced within eight years from the date the violation occurred.

17 Comment: *This does not restrict the Anti-Doping Organization from considering an earlier anti-doping violation for purposes of the sanction for a subsequent violation that occurs more than eight years later. In other words, a second violation ten years after a first violation is considered a second violation for sanction purposes.*

PART TWO

EDUCATION & RESEARCH

ARTICLE 18: EDUCATION

18.1 Basic Principle and Primary Goal

The basic principle for information and education programs shall be to preserve the spirit of sport as described in the Introduction to the *Code*, from being undermined by doping. The primary goal shall be to dissuade *Athletes* from using *Prohibited Substances* and *Prohibited Methods*.

18.2 Program and Activities

Each *Anti-Doping Organization* should plan, implement and monitor information and education programs. The programs should provide *Participants* with updated and accurate information on at least the following issues:

- Substances and methods on the *Prohibited List*
- Health consequences of doping
- *Doping Control* procedures
- *Athletes'* rights and responsibilities

The programs should promote the spirit of sport in order to establish an anti-doping environment which influences behavior among *Participants*.

Athlete Support Personnel should educate and counsel *Athletes* regarding anti-doping policies and rules adopted pursuant to the *Code*.

18.3 Coordination and Cooperation

All *Signatories* and *Participants* shall cooperate with each other and governments to coordinate their efforts in anti-doping information and education.

ARTICLE 19: RESEARCH

19.1 Purpose of Anti-Doping Research

Anti-doping research contributes to the development and implementation of efficient programs within *Doping Control* and to anti-doping information and education.

19.2 Types of Research

Anti-doping research may include, for example, sociological, behavioral, juridical and ethical studies in addition to medical, analytical and physiological investigation.

19.3 Coordination

Coordination of anti-doping research through *WADA* is encouraged. Subject to intellectual property rights, copies of anti-doping research results should be provided to *WADA*.

19.4 Research Practices

Anti-doping research shall comply with internationally recognized ethical practices.

19.5 Research Using *Prohibited Substances* and *Prohibited Methods*

Research efforts should avoid the administration of *Prohibited Substances* or *Prohibited Methods* to *Athletes*.

19.6 Misuse of Results

Adequate precautions should be taken so that the results of anti-doping research are not misused and applied for doping.

PART THREE

ROLES & RESPONSIBILITIES

ARTICLE 20: ADDITIONAL ROLES AND RESPONSIBILITIES OF *SIGNATORIES*

20.1 Roles and Responsibilities of the International Olympic Committee

20.1.1 To adopt and implement anti-doping policies and rules for the Olympic Games which conform with the *Code*.

20.1.2 To require as a condition of recognition by the International Olympic Committee, that International Federations within the Olympic Movement are in compliance with the *Code*.

20.1.3 To withhold some or all Olympic funding of sport organizations that are not in compliance with the *Code*.

20.1.4 To take appropriate action to discourage non-compliance with the *Code* as provided in Article 23.5.

20.1.5 To authorize and facilitate the *Independent Observer Program*.

20.2 Roles and Responsibilities of the International Paralympic Committee

20.2.1 To adopt and implement anti-doping policies and rules for the Paralympic Games which conform with the *Code*.

20.2.2 To require as a condition of recognition by the International Paralympic Committee, that National Paralympic Committees within the Olympic Movement are in compliance with the *Code*.

20 Comment: *Responsibilities for Signatories and Participants are addressed in various articles in the Code and the responsibilities listed in this part are additional to these responsibilities.*

20.2.3 To withhold some or all Paralympic funding of sport organizations that are not in compliance with the *Code*.

20.2.4 To take appropriate action to discourage non-compliance with the *Code* as provided in Article 23.5.

20.2.5 To authorize and facilitate the *Independent Observer Program*.

20.3 Roles and Responsibilities of International Federations

20.3.1 To adopt and implement anti-doping policies and rules which conform with the *Code*.

20.3.2 To require as a condition of membership that the policies, rules and programs of National Federations are in compliance with the *Code*.

20.3.3 To require all *Athletes* and *Athlete Support Personnel* within their jurisdiction to recognize and be bound by anti-doping rules in conformance with the *Code*.

20.3.4 To require *Athletes* who are not regularly members of the International Federation or one of its member National Federations to be available for *Sample* collection and provide accurate and up-to-date whereabouts information if required by the conditions for eligibility established by the International Federation or, as applicable, the *Major Event Organization*.

20.3.5 To monitor the anti-doping programs of National Federations.

20.3.4 Comment: *This would include, for example, Athletes from professional leagues.*

20.3.6 To take appropriate action to discourage non-compliance with the *Code* as provided in Article 23.5.

20.3.7 To authorize and facilitate the *Independent Observer* program at *International Events*.

20.3.8 To withhold some or all funding to its member National Federations that are not in compliance with the *Code*.

20.4 Roles and Responsibilities of *National Olympic Committees* and National Paralympic Committees

20.4.1 To ensure that their anti-doping policies and rules conform with the *Code*.

20.4.2 To require as a condition of membership or recognition that National Federations' anti-doping policies and rules are in compliance with the applicable provisions of the *Code*.

20.4.3 To require *Athletes* who are not regular members of a National Federation to be available for *Sample* collection and provide accurate and up-to-date whereabouts information on a regular basis if required during the year before the Olympic Games as a condition of participation in the Olympic Games.

20.4.4 To cooperate with their *National Anti-Doping Organization*.

20.4.5 To withhold some or all funding, during any period of his or her *Ineligibility*, to any *Athlete* or *Athlete Support Personnel* who has violated anti-doping rules.

20.4.6 To withhold some or all funding to its member or recognized National Federations that are not in compliance with the *Code*.

20.5 Roles and Responsibilities of *National Anti-Doping Organizations*

20.5.1 To adopt and implement anti-doping rules and polices which conform with the *Code*.

20.5.2 To cooperate with other relevant national organizations and other *Anti-Doping Organizations*.

20.5.3 To encourage reciprocal testing between *National Anti-Doping Organizations*.

20.5.4 To promote anti-doping research.

20.6 Roles and Responsibilities of *Major Event Organizations*

20.6.1 To adopt and implement anti-doping policies and rules for their *Events* which conform with the *Code*.

20.6.2 To take appropriate action to discourage non-compliance with the *Code* as provided in Article 23.5.

20.6.3 To authorize and facilitate the *Independent Observer Program*.

20.7 Roles and Responsibilities of *WADA*

20.7.1 To adopt and implement policies and procedures which conform with the *Code*.

20.7.2 To monitor the processing of *Adverse Analytical Findings*.

20.7.3 To approve *International Standards* applicable to the implementation of the *Code*.

20.7.4 To accredit laboratories to conduct *Sample* analysis or to approve others to conduct *Sample* analysis.

20.7.5 To develop and approve Models of Best Practice.

20.7.6 To promote, conduct, commission, fund and coordinate anti-doping research.

20.7.7 To conduct an effective *Independent Observer Program*.

20.7.8 To conduct *Doping Controls* as authorized by other *Anti-Doping Organizations*.

ARTICLE 21: ROLES AND RESPONSIBILITIES OF *PARTICIPANTS*

21.1 Roles and Responsibilities of *Athletes*

21.1.1 To be knowledgeable of and comply with all applicable anti-doping policies and rules adopted pursuant to the *Code*.

21.1.2 To be available for *Sample* collection.

21.1.3 To take responsibility, in the context of anti-doping, for what they ingest and use.

21.1.4 To inform medical personnel of their obligation not to *Use Prohibited Substances* and *Prohibited Methods* and to take responsibility to make sure that any medical treatment received does not violate anti-doping policies and rules adopted pursuant to the *Code*.

21.2 Roles and Responsibilities of *Athlete Support Personnel*

21.2.1 To be knowledgeable of and comply with all anti-doping policies and rules adopted pursuant to the *Code* and which are applicable to them or the *Athletes* whom they support.

21.2.2 To cooperate with the *Athlete Testing* program.

21.2.3 To use their influence on *Athlete* values and behavior to foster anti-doping attitudes.

ARTICLE 22: INVOLVEMENT OF GOVERNMENTS

Each government's commitment to the *Code* will be evidenced by its signing a Declaration on or before the first day of the Athens Olympic Games to be followed by a process leading to a convention or other obligation to be implemented as appropriate to the constitutional and administrative contexts of each government on or before the first day of the Turin Winter Olympic Games.

It is the expectation of the *Signatories* that the Declaration and the convention or other obligation will reflect the following major points:

22.1 Affirmative measures will be undertaken by each government in support of anti-doping in at least the following areas:

- Support for national anti-doping programs;
- The availability of *Prohibited Substances* and *Prohibited Methods*;
- Facilitate access for *WADA* to conduct *Out-of-Competition Doping Controls*;
- The problem of nutritional supplements which contain undisclosed *Prohibited Substances*; and
- Withholding some or all financial support from sport organizations and *Participants* that are not in compliance with the *Code* or applicable anti-doping rules adopted pursuant to the *Code*.

22 Comment: *Most governments cannot be parties to, or be bound by, private non-governmental instruments such as the Code. For that reason, governments are not asked to be Signatories to the Code. However, the effort to combat doping through the coordinated and harmonized program reflected in the Code is very much a joint effort between the sport movement and governments. An example of one type of obligation referred to above is the convention discussed in the Final Communiqué of the UNESCO Round Table of Ministers and Senior Officials Responsible for Physical Education and Sport held in Paris on 9/10 January 2003.*

22.2 All other governmental involvement with anti-doping will be brought into harmony with the *Code*.

22.3 Ongoing compliance with the commitments reflected in the convention or other obligation will be monitored as determined in consultation between *WADA* and the applicable government(s).

PART FOUR

ACCEPTANCE, COMPLIANCE, MODIFICATION & INTERPRETATION

ARTICLE 23: ACCEPTANCE, COMPLIANCE AND MODIFICATION

23.1 Acceptance of the *Code*

23.1.1 The following entities shall be *Signatories* accepting the *Code*: *WADA*, The International Olympic Committee, International Federations, The International Paralympic Committee, *National Olympic Committees*, National Paralympic Committees, *Major Event Organizations*, and *National Anti-Doping Organizations*. These entities shall accept the *Code* by signing a declaration of acceptance upon approval by each of their respective governing bodies.

23.1.2 Other sport organizations that may not be under the control of a *Signatory* may, upon *WADA's* invitation, also accept the *Code*.

23.1.3 A list of all acceptances will be made public by *WADA*.

23.2 Implementation of the *Code*

23.2.1 The *Signatories* shall implement applicable *Code* provisions through policies, statutes, rules or regulations according to their authority and within their relevant spheres of responsibility.

23.1.1 Comment: *Each accepting Signatory will separately sign an identical copy of the standard form common declaration of acceptance and deliver it to WADA. The act of acceptance will be as authorized by the organic documents of each organization. For example, an International Federation by its Congress and WADA by its Foundation Board.*

23.1.2 Comment: *Those professional leagues that are not currently under the jurisdiction of any government or International Federation will be encouraged to accept the Code.*

23.2.2 In implementing the *Code*, the *Signatories* are encouraged to use the Models of Best Practice recommended by *WADA*.

23.3 Acceptance and Implementation Deadlines

23.3.1 *Signatories* shall accept and implement the *Code* on or before the first day of the Athens Olympic Games.

23.3.2 The *Code* may be accepted after the above-referenced deadlines; however, *Signatories* shall not be considered in compliance with the *Code* until they have accepted the *Code* (and that acceptance has not been withdrawn).

23.4 Monitoring Compliance with the *Code*

23.4.1 Compliance with the *Code* shall be monitored by *WADA* or as otherwise agreed by *WADA*.

23.4.2 To facilitate monitoring, each *Signatory* shall report to *WADA* on its compliance with the *Code* every second year and shall explain reasons for noncompliance.

23.4.3 *WADA* shall consider explanations for non-compliance and, in extraordinary situations, may recommend to the International Olympic Committee, International Paralympic Committee, International Federations, and *Major Event Organizations* that they provisionally excuse the non-compliance.

23.4.3 Comment: *WADA recognizes that amongst Signatories and governments, there will be significant differences in anti-doping experience, resources, and the legal context in which anti-doping activities are carried out. In considering whether an organization is compliant, WADA will consider these differences.*

23.4.4 *WADA* shall, after dialogue with the subject organization, make reports on compliance to the International Olympic Committee, the International Paralympic Committee, International Federations, and *Major Event Organizations*. These reports shall also be made available to the public.

23.5 Consequences of Noncompliance with the *Code*

23.5.1 Noncompliance with the *Code* by either the government or *National Olympic Committee* of a country may result in consequences with respect to Olympic Games, Paralympic Games, World Championships or the *Events* of *Major Event Organizations* as determined by the ruling body for each *Event*. The imposition of such consequences may be appealed by the *National Olympic Committee* or government to CAS pursuant to Article 13.4.

23.6 Modification of the *Code*

23.6.1 *WADA* shall be responsible for overseeing the evolution and improvement of the *Code*. *Athletes* and all *Signatories* and governments shall be invited to participate in such process.

23.6.2 *WADA* shall initiate proposed amendments to the *Code* and shall ensure a consultative process to both receive and respond to recommendations and to facilitate review and feedback from *Athletes*, *Signatories* and governments on recommended amendments.

23.6.3 Amendments to the *Code* shall, after appropriate consultation, be approved by a two-thirds majority of the *WADA* Foundation Board including a majority of both the public sector and Olympic Movement members casting votes. Amendments shall, unless provided otherwise, go into effect three months after such approval.

23.6.4 *Signatories* shall implement any applicable amendment to the *Code* within one year of approval by the *WADA* Foundation Board.

23.7 Withdrawal of Acceptance of the *Code*

23.7.1 *Signatories* may withdraw acceptance of the *Code* after providing *WADA* six-month's written notice of their intent to withdraw.

ARTICLE 24: INTERPRETATION OF THE *CODE*

24.1 The official text of the *Code* shall be maintained by *WADA* and shall be published in English and French. In the event of any conflict between the English and French versions, the English version shall prevail.

24.2 The comments annotating various provisions of the *Code* are included to assist in the understanding and interpretation of the *Code*.

24.3 The *Code* shall be interpreted as an independent and autonomous text and not by reference to the existing law or statutes of the *Signatories* or governments.

24.4 The headings used for the various Parts and Articles of the *Code* are for convenience only and shall not be deemed part of the substance of the *Code* or to affect in any way the language of the provisions to which they refer.

24.5 The *Code* shall not apply retrospectively to matters pending before the date the *Code* is accepted by a Signatory and implemented in its rules.

24.6 APPENDIX I Definitions shall be considered an integral part of the *Code*.

24.5 Comment: *For example, conduct which is an anti-doping rule violation described in the Code, but which is not a violation under an International Federation's pre-Code rules, would not be a violation until the International Federation's rules are changed.*

Pre-Code anti-doping rule violations would continue to count as "First violations" or "Second violations" for purposes of determining sanctions under Article 10 for subsequent post-Code violations.

APPENDIX 1

DEFINITIONS

Adverse Analytical Finding: A report from a laboratory or other approved *Testing* entity that identifies in a *Specimen* the presence of a *Prohibited Substance* or its *Metabolites* or *Markers* (including elevated quantities of endogenous substances) or evidence of the *Use* of a *Prohibited Method*.

Anti-Doping Organization: A *Signatory* that is responsible for adopting rules for initiating, implementing or enforcing any part of the *Doping Control* process. This includes, for example, the International Olympic Committee, the International Paralympic Committee, other *Major Event Organizations* that conduct *Testing* at their *Events*, *WADA*, International Federations, and *National Anti-Doping Organizations*.

Athlete: For purposes of *Doping Control*, any *Person* who participates in sport at the international level (as defined by each International Federation) or national level (as defined by each *National Anti-Doping Organization*) and any additional *Person* who participates in sport at a lower level if designated by the *Person's National Anti-Doping Organization*. For purposes of anti-doping information and education, any *Person* who participates in sport under the authority of any *Signatory*, government, or other sports organization accepting the *Code*.

Athlete Support Personnel: Any coach, trainer, manager, agent, team staff, official, medical or para-medical personnel working with or treating *Athletes* participating in or preparing for sports competition.

Athlete Comment: *This definition makes it clear that all international and national-calibre athletes are subject to the anti-doping rules of the Code, with the precise definitions of international and national level sport to be set forth in the anti-doping rules of the International Federations and National Anti-Doping Organizations, respectively. At the national level, anti-doping rules adopted pursuant to the Code shall apply, at a minimum, to all persons on national teams and all persons qualified to compete in any national championship in any sport. The definition also allows each National Anti-Doping Organization, if it chooses to do so, to expand its anti-doping control program beyond national-calibre athletes to athletes at lower levels of competition. Athletes at all levels of competition should receive the benefit of anti-doping information and education.*

Attempt: Purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation. Provided, however, there shall be no anti-doping rule violation based solely on an *Attempt* to commit a violation if the *Person* renunciates the attempt prior to it being discovered by a third party not involved in the *Attempt*.

Code: The World Anti-Doping *Code*.

Competition: A single race, match, game or singular athletic contest. For example, the finals of the Olympic 100-meter dash. For stage races and other athletic contests where prizes are awarded on a daily or other interim basis the distinction between a *Competition* and an *Event* will be as provided in the rules of the applicable International Federation.

Consequences of Anti-Doping Rules Violations: An *Athlete's* or other *Person's* violation of an anti-doping rule may result in one or more of the following: **(a)** ***Disqualification*** means the *Athlete's* results in a particular *Competition* or *Event* are invalidated, with all resulting consequences including forfeiture of any medals, points and prizes; **(b)** ***Ineligibility*** means the *Athlete* or other *Person* is barred for a specified period of time from participating in any *Competition* or other activity or funding as provided in Article 10.9; and **(c)** ***Provisional Suspension*** means the *Athlete* or other *Person* is barred temporarily from participating in any *Competition* prior to the final decision at a hearing conducted under Article 8 (Right to a Fair Hearing).

Disqualification: See *Consequences of Anti-Doping Rules Violations* above.

Doping Control: The process including test distribution planning, *Sample* collection and handling, laboratory analysis, results management, hearings and appeals.

Event: A series of individual *Competitions* conducted together under one ruling body (e.g., the Olympic Games, FINA World Championships, or Pan American Games).

In-Competition: For purposes of differentiating between *In-Competition* and *Out-of-Competition Testing*, unless provided otherwise in the rules of an International Federation or other relevant *Anti-Doping Organization*, an *In-Competition* test is a test where an *Athlete* is selected for testing in connection with a specific *Competition*.

Independent Observer Program: A team of observers, under the supervision of *WADA*, who observe the *Doping Control* process at certain *Events* and report on observations. If *WADA* is testing *In-Competition* at an *Event*, the observers shall be supervised by an independent organization.

Ineligibility: See *Consequences of Anti-Doping Rules Violations* above.

International Event: An *Event* where the International Olympic Committee, the International Paralympic Committee, an International Federation, a *Major Event Organization*, or another international sport organization is the ruling body for the *Event* or appoints the technical officials for the *Event*.

International-Level Athlete: *Athletes* designated by one or more International Federations as being within the *Registered Testing Pool* for an International Federation.

International Standard: A standard adopted by *WADA* in support of the *Code*. Compliance with an *International Standard* (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the *International Standard* were performed properly.

In-Competition Comment: *The distinction between "In-Competition" and "Out-of-Competition" testing is significant because the full Prohibited List is only tested for "In-Competition." Prohibited stimulants, for example, are not tested for Out-of-Competition because they have no performance enhancing benefit unless they are in the Athlete's system while the Athlete is actually competing. So long as the prohibited stimulant has cleared the Athlete's system at the time the Athlete competes, it makes no difference whether that stimulant could have been found in the Athlete's urine the day before or the day after the Competition.*

Major Event Organizations: This term refers to the continental associations of *National Olympic Committees* and other international multi-sport organizations that function as the ruling body for any continental, regional or other *International Event*.

Marker: A compound, group of compounds or biological parameters that indicates the *Use* of a *Prohibited Substance* or *Prohibited Method*.

Metabolite: Any substance produced by a biotransformation process.

Minor: A natural *Person* who has not reached the age of majority as established by the applicable laws of his or her country of residence.

National Anti-Doping Organization: The entity(ies) designated by each country as possessing the primary authority and responsibility to adopt and implement anti-doping rules, direct the collection of *Samples*, the management of test results, and the conduct of hearings, all at the national level. If this designation has not been made by the competent public authority(ies), the entity shall be the country's *National Olympic Committee* or its designee.

National Event: A sport *Event* involving international or national-level *Athletes* that is not an *International Event*.

National Olympic Committee: The organization recognized by the International Olympic Committee. The term *National Olympic Committee* shall also include the National Sport Confederation in those countries where the National Sport Confederation assumes typical *National Olympic Committee* responsibilities in the anti-doping area.

No Advance Notice: A *Doping Control* which takes place with no advance warning to the *Athlete* and where the *Athlete* is continuously chaperoned from the moment of notification through *Sample* provision.

No Fault or Negligence: The *Athlete's* establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had *Used* or been administered the *Prohibited Substance* or *Prohibited Method.*

No Significant Fault or Negligence: The *Athlete's* establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for *No Fault or Negligence*, was not significant in relationship to the anti-doping rule violation.

Out-of-Competition: Any *Doping Control* which is not *In-Competition.*

Participant: Any *Athlete* or *Athlete Support Personnel.*

Person: A natural *Person* or an organization or other entity.

Possession: The actual, physical possession, or the constructive possession (which shall be found only if the *Person* has exclusive control over the *Prohibited Substance/Method* or the premises in which a *Prohibited Substance/Method* exists); provided, however, that if the *Person* does not have exclusive control over the *Prohibited Substance/Method* or the premises in which a *Prohibited Substance/Method* exists, constructive possession shall only be found if the *Person* knew about the presence of the *Prohibited Substance/Method* and intended to exercise control over it. Provided, however, there shall be no anti-doping rule violation based solely on *possession* if, prior to receiving

Possession Comment: *Under this definition, steroids found in an Athlete's car would constitute a violation unless the Athlete establishes that someone else used the car; in that event, the Anti-Doping Organization must establish that, even though the Athlete did not have exclusive control over the car, the Athlete knew about the steroids and intended to have control over the steroids. Similarly, in the example of steroids found in a home medicine cabinet under the joint control of an Athlete and spouse, the Anti-Doping Organization must establish that the Athlete knew the steroids were in the cabinet and that the Athlete intended to exercise control over the steroids.*

notification of any kind that the *Person* has committed an anti-doping rule violation, the *Person* has taken concrete action demonstrating that the *Person* no longer intends to have *Possession* and has renounced the *Person's* previous *Possession.*

Prohibited List: The List identifying the *Prohibited Substances* and *Prohibited Methods.*

Prohibited Method: Any method so described on the *Prohibited List.*

Prohibited Substance: Any substance so described on the *Prohibited List.*

Provisional Hearing: For purposes of Article 7.5, an expedited abbreviated hearing occurring prior to a hearing under Article 8 (Right to a Fair Hearing) that provides the *Athlete* with notice and an opportunity to be heard in either written or oral form.

Provisional Suspension: See *Consequences* above.

Publicly Disclose or Publicly Report: To disseminate or distribute information to the general public or persons beyond those persons entitled to earlier notification in accordance with Article 14.

Registered Testing Pool: The pool of top level *Athletes* established separately by each International Federation and *National Anti-Doping Organization* who are subject to both *In-Competition* and *Out-of-Competition Testing* as part of that International Federation's or Organization's test distribution plan.

Sample Specimen: Any biological material collected for the purposes of *Doping Control.*

Registered Testing Pool Comment: *Each International Federation shall clearly define the specific criteria for inclusion of Athletes in its Registered Testing Pool. For example, the criteria could be a specified world ranking cut-off, a specified time standard, membership on a national team, etc.*

Signatories: Those entities signing the *Code* and agreeing to comply with the *Code*, including the International Olympic Committee, International Federations, International Paralympic Committee, *National Olympic Committees*, National Paralympic Committees, *Major Event Organizations*, *National Anti-Doping Organizations*, and *WADA*.

Tampering: Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly to alter results or prevent normal procedures from occurring.

Target Testing: Selection of *Athletes* for *Testing* where specific *Athletes* or groups of *Athletes* are selected on a non-random basis for *Testing* at a specified time.

Team Sport: A sport in which the substitution of players is permitted during a *Competition*.

Testing: The parts of the *Doping Control* process involving test distribution planning, *Sample* collection, *Sample* handling, and *Sample* transport to the laboratory.

Trafficking: To sell, give, administer, transport, send, deliver or distribute a *Prohibited Substance* or *Prohibited Method* to an *Athlete* either directly or through one or more third parties, but excluding the sale or distribution (by medical personnel or by *Persons* other than an *Athlete's Support Personnel*) of a *Prohibited Substance* for genuine and legal therapeutic purposes.

Use: The application, ingestion, injection or consumption by any means whatsoever of any *Prohibited Substance* or *Prohibited Method*.

WADA: The World Anti-Doping Agency.

TAB 5



WORLD
ANTI-DOPING
AGENCY

The World Anti-Doping Code

THE 2006 PROHIBITED LIST

INTERNATIONAL STANDARD

The official text of the *Prohibited List* shall be maintained by *WADA* and shall be published in English and French. In the event of any conflict between the English and French versions, the English version shall prevail.

This List shall come into effect on 1 January 2006.

THE 2006 PROHIBITED LIST
WORLD ANTI-DOPING CODE

Valid 1 January 2006

The use of any drug should be limited to medically justified indications

SUBSTANCES AND METHODS PROHIBITED AT ALL TIMES (IN- AND OUT-OF-COMPETITION)

PROHIBITED SUBSTANCES

S1. ANABOLIC AGENTS

Anabolic agents are prohibited.

1. Anabolic Androgenic Steroids (AAS)

a. Exogenous* AAS, including:

1-androstendiol (5α-androst-1-ene-3β,17β-diol); **1-androstendione** (5α-androst-1-ene-3,17-dione); **bolandiol** (19-norandrostenediol); **bolasterone; boldenone; boldione** (androsta-1,4-diene-3,17-dione); **calusterone; clostebol; danazol** (17α-ethynyl-17β-hydroxyandrost-4-eno[2,3-d]isoxazole); **dehydrochlormethyltestosterone** (4-chloro-17β-hydroxy-17α-methylandrosta-1,4-dien-3-one); **desoxymethyltestosterone** (17α-methyl-5α-androst-2-en-17β-ol); **drostanolone; ethylestrenol** (19-nor-17α-pregn-4-en-17-ol); **fluoxymesterone; formebolone; furazabol** (17β-hydroxy-17α-methyl-5α-androstano[2,3-c]-furazan); **gestrinone; 4-hydroxytestosterone** (4,17β-dihydroxyandrost-4-en-3-one); **mestanolone; mesterolone; metenolone; methandienone** (17β-hydroxy-17α-methylandrosta-1,4-dien-3-one); **methandriol; methasterone** (2α, 17α-dimethyl-5α-androstane-3-one-17β-ol); **methyldienolone** (17β-hydroxy-17α-methylestra-4,9-dien-3-one); **methyl-1-testosterone** (17β-hydroxy-17α-methyl-5α-androst-1-en-3-one); **methylnortestosterone** (17β-hydroxy-17α-methylestr-4-en-3-one); **methyltrienolone** (17β-hydroxy-17α-methylestra-4,9,11-trien-3-one); **methyltestosterone; mibolerone; nandrolone; 19-norandrostenedione** (estr-4-ene-3,17-dione); **norboletone; norclostebol; norethandrolone; oxabolone; oxandrolone; oxymesterone; oxymetholone; prostanozol** ([3,2-c]pyrazole-5α-etioallocholane-17β-tetrahydropyranol); **quinbolone; stanozolol; stenbolone; 1-testosterone** (17β-hydroxy-5α-

androst-1-en-3-one); **tetrahydrogestrinone** (18a-homo-pregna-4,9,11-trien-17β-ol-3-one); **trenbolone** and other substances with a similar chemical structure or similar biological effect(s).

b. Endogenous** AAS:

androstenediol (androst-5-ene-3β,17β-diol); **androstenedione** (androst-4-ene-3,17-dione); **dihydrotestosterone** (17β-hydroxy-5α-androstan-3-one); **prasterone** (dehydroepiandrosterone, DHEA); **testosterone**
and the following metabolites and isomers:

5α-androstane-3α,17α-diol; 5α-androstane-3α,17β-diol; 5α-androstane-3β,17α-diol; 5α-androstane-3β,17β-diol; androst-4-ene-3α,17α-diol; androst-4-ene-3α,17β-diol; androst-4-ene-3β,17α-diol; androst-5-ene-3α,17α-diol; androst-5-ene-3α,17β-diol; androst-5-ene-3β,17α-diol; 4-androstenediol (androst-4-ene-3β,17β-diol); **5-androstenedione** (androst-5-ene-3,17-dione); **epi-dihydrotestosterone; 3α-hydroxy-5α-androstan-17-one; 3β-hydroxy-5α-androstan-17-one; 19-norandrosterone; 19-noretiocholanolone.**

Where an anabolic androgenic steroid is capable of being produced endogenously, a *Sample* will be deemed to contain such *Prohibited Substance* where the concentration of such *Prohibited Substance* or its metabolites or markers and/or any other relevant ratio(s) in the *Athlete's Sample* so deviates from the range of values normally found in humans that it is unlikely to be consistent with normal endogenous production. A *Sample* shall not be deemed to contain a *Prohibited Substance* in any such case where an *Athlete* proves that the concentration of the *Prohibited Substance* or its metabolites or markers and/or the relevant ratio(s) in the *Athlete's Sample* is attributable to a physiological or pathological condition.

In all cases, and at any concentration, the *Athlete's* sample will be deemed to contain a *Prohibited Substance* and the laboratory will report an *Adverse Analytical Finding* if, based on any reliable analytical method (e.g. IRMS), the laboratory can show that the *Prohibited Substance* is of exogenous origin. In such case, no further investigation is necessary.

If a value in the range of levels normally found in humans is reported and the reliable analytical method (e.g. IRMS) has not determined the exogenous origin of the substance, but if there are serious indications, such as a comparison to reference steroid profiles, of a possible *Use* of a *Prohibited Substance,* further investigation shall be conducted by the relevant *Anti-Doping Organization* by reviewing the results of any previous test(s) or by conducting subsequent test(s), in order to determine whether the result is due to a physiological or pathological condition, or has occurred as a consequence of the exogenous origin of a *Prohibited Substance.*

When a laboratory has reported a T/E ratio greater than four (4) to one (1) and any reliable analytical method (e.g. IRMS) applied has not determined the exogenous origin of the substance, further investigation may be conducted by a review of previous tests or by conducting subsequent test(s), in order to determine whether the result is due to a physiological or pathological condition, or has occurred as a consequence of the exogenous origin of a *Prohibited Substance*. If a laboratory reports, using an additional reliable analytical method (e.g. IRMS), that the *Prohibited Substance* is of exogenous origin, no further investigation is necessary and the *Sample* will be deemed to contain such *Prohibited Substance*. When an additional reliable analytical method (e.g. IRMS) has not been applied and a minimum of three previous test results are not available, the relevant *Anti-Doping Organization* shall test the *Athlete* with no advance notice at least three times within a three-month period. If the longitudinal profile of the *Athlete* that is subject to the subsequent tests is not physiologically normal, the result shall be reported as an *Adverse Analytical Finding*.

In extremely rare individual cases, boldenone of endogenous origin can be consistently found at very low nanograms per milliliter (ng/mL) levels in urine. When such a very low concentration of boldenone is reported by a laboratory and any reliable analytical method (e.g. IRMS) applied has not determined the exogenous origin of the substance, further investigation may be conducted by a review of previous tests or by conducting subsequent test(s). When an additional reliable analytical method (e.g. IRMS) has not been applied, a minimum of three no advance notice tests in a period of three months shall be conducted by the relevant *Anti-Doping Organization*. If the longitudinal profile of the *Athlete* who is subject to the subsequent tests is not physiologically normal, the result shall be reported as an *Adverse Analytical Finding*.

For 19-norandrosterone, an *Adverse Analytical Finding* reported by a laboratory is considered to be scientific and valid proof of exogenous origin of the *Prohibited Substance*. In such case, no further investigation is necessary.

Should an *Athlete* fail to cooperate in the investigations, the *Athlete's Sample* shall be deemed to contain a *Prohibited Substance*.

Other Anabolic Agents, including but not limited to:

Clenbuterol, tibolone, zeranol, zilpaterol.

For purposes of this section:
* *"exogenous" refers to a substance which is not ordinarily capable of being produced by the body naturally.*
** *"endogenous" refers to a substance which is capable of being produced by the body naturally.*

S2. HORMONES AND RELATED SUBSTANCES

The following substances, including other substances with a similar chemical structure or similar biological effect(s), and their releasing factors, are prohibited:

1. **Erythropoietin (EPO);**
2. **Growth Hormone (hGH), Insulin-like Growth Factors** (e.g. **IGF-1), Mechano Growth Factors (MGFs);**
3. **Gonadotrophins (LH, hCG),** prohibited in males only;
4. **Insulin;**
5. **Corticotrophins.**

Unless the *Athlete* can demonstrate that the concentration was due to a physiological or pathological condition, a *Sample* will be deemed to contain a *Prohibited Substance* (as listed above) where the concentration of the *Prohibited Substance* or its metabolites and/or relevant ratios or markers in the *Athlete's Sample* so exceeds the range of values normally found in humans that it is unlikely to be consistent with normal endogenous production.

If a laboratory reports, using a reliable analytical method, that the *Prohibited Substance* is of exogenous origin, the *Sample* will be deemed to contain a *Prohibited Substance* and shall be reported as an *Adverse Analytical Finding*.

The presence of other substances with a similar chemical structure or similar biological effect(s), diagnostic marker(s) or releasing factors of a hormone listed above or of any other finding which indicate(s) that the substance detected is of exogenous origin, will be deemed to reflect the use of a *Prohibited Substance* and shall be reported as an *Adverse Analytical Finding*.

S3. BETA-2 AGONISTS

All beta-2 agonists including their D- and L-isomers are prohibited.

As an exception, formoterol, salbutamol, salmeterol and terbutaline, when administered by inhalation, require an abbreviated Therapeutic Use Exemption.

Despite the granting of any form of Therapeutic Use Exemption, a concentration of salbutamol (free plus glucuronide) greater than 1000 ng/mL will be considered an *Adverse Analytical Finding* unless the athlete proves that the abnormal result was the consequence of the therapeutic use of inhaled salbutamol.

S4. AGENTS WITH ANTI-ESTROGENIC ACTIVITY

The following classes of anti-estrogenic substances are prohibited:

1. **Aromatase inhibitors including, but not limited to, anastrozole, letrozole, aminoglutethimide, exemestane, formestane, testolactone.**

2. **Selective Estrogen Receptor Modulators (SERMs) including, but not limited to, raloxifene, tamoxifen, toremifene.**

3. **Other anti-estrogenic substances including, but not limited to, clomiphene, cyclofenil, fulvestrant.**

S5. DIURETICS AND OTHER MASKING AGENTS

Masking agents include but are not limited to:

Diuretics*, epitestosterone, probenecid, alpha-reductase inhibitors (e.g. **finasteride, dutasteride), plasma expanders** (e.g. **albumin, dextran, hydroxyethyl starch).**

Diuretics include:

acetazolamide, amiloride, bumetanide, canrenone, chlorthalidone, etacrynic acid, furosemide, indapamide, metolazone, spironolactone, thiazides (e.g. **bendroflumethiazide, chlorothiazide, hydrochlorothiazide), triamterene**, and other substances with a similar chemical structure or similar biological effect(s) (except for drosperinone, which is not prohibited).

* A Therapeutic Use Exemption is not valid if an *Athlete*'s urine contains a diuretic in association with threshold or sub-threshold levels of a *Prohibited Substance*(s).

PROHIBITED METHODS

M1. ENHANCEMENT OF OXYGEN TRANSFER

The following are prohibited:

a. Blood doping, including the use of autologous, homologous or heterologous blood or red blood cell products of any origin.

b. Artificially enhancing the uptake, transport or delivery of oxygen, including but not limited to perfluorochemicals, efaproxiral (RSR13) and modified haemoglobin products (e.g. haemoglobin-based blood substitutes, microencapsulated haemoglobin products).

M2. CHEMICAL AND PHYSICAL MANIPULATION

a. *Tampering,* or attempting to tamper, in order to alter the integrity and validity of *Samples* collected during *Doping Controls* is prohibited. These include but are not limited to catheterisation, urine substitution and/or alteration.

b. Intravenous infusions are prohibited, except as a legitimate acute medical treatment.

M3. GENE DOPING

The non-therapeutic use of cells, genes, genetic elements, or of the modulation of gene expression, having the capacity to enhance athletic performance, is prohibited.

SUBSTANCES AND METHODS PROHIBITED IN-COMPETITION

In addition to the categories S1 to S5 and M1 to M3 defined above, the following categories are prohibited in competition:

PROHIBITED SUBSTANCES

S6. STIMULANTS

The following stimulants are prohibited, including both their optical (D- and L-) isomers where relevant:

Adrafinil, adrenaline*, amfepramone, amiphenazole, amphetamine, amphetaminil, benzphetamine, bromantan, carphedon, cathine, clobenzorex, cocaine, cropropamide, crotetamide, cyclazodone, dimethylamphetamine, ephedrine***, etamivan, etilamphetamine, etilefrine, famprofazone, fenbutrazate, fencamfamin, fencamine, fenetylline, fenfluramine, fenproporex, furfenorex, heptaminol, isometheptene, levmethamfetamine, meclofenoxate, mefenorex, mephentermine, mesocarb, methamphetamine (D-), methylenedioxyamphetamine, methylenedioxymethamphetamine, p-methylamphetamine, methylephedrine***, methylphenidate, modafinil, nikethamide, norfenefrine, norfenfluramine, octopamine, ortetamine, oxilofrine, parahydroxyamphetamine, pemoline, pentetrazol, phendimetrazine, phenmetrazine, phenpromethamine, phentermine, prolintane, propylhexedrine, selegiline, sibutramine, strychnine** and other substances with a similar chemical structure or similar biological effect(s)****.

* Adrenaline associated with local anaesthetic agents or by local administration (e.g. nasal, ophthalmologic) is not prohibited.
** **Cathine** is prohibited when its concentration in urine is greater than 5 micrograms per milliliter.
*** Each of **ephedrine** and **methylephedrine** is prohibited when its concentration in urine is greater than 10 micrograms per milliliter.
**** The following substances included in the 2006 Monitoring Program (bupropion, caffeine, phenylephrine, phenylpropanolamine, pipradol, pseudoephedrine, synephrine) are not considered as *Prohibited Substances*.

S7. NARCOTICS

The following narcotics are prohibited:

buprenorphine, dextromoramide, diamorphine (heroin), fentanyl and its derivatives, hydromorphone, methadone, morphine, oxycodone, oxymorphone, pentazocine, pethidine.

S8. CANNABINOIDS

Cannabinoids (e.g. hashish, marijuana) are prohibited.

S9. GLUCOCORTICOSTEROIDS

All glucocorticosteroids are prohibited when administered orally, rectally, intravenously or intramuscularly. Their use requires a Therapeutic Use Exemption approval.

Except as indicated below, other routes of administration require an abbreviated Therapeutic Use Exemption.

Topical preparations when used for dermatological, aural/otic, nasal, buccal cavity and ophthalmologic disorders are not prohibited and do not require any form of Therapeutic Use Exemption.

SUBSTANCES PROHIBITED IN PARTICULAR SPORTS

P1. ALCOHOL

Alcohol (ethanol) is prohibited *in-competition* only, in the following sports. Detection will be conducted by analysis of breath and/or blood. The doping violation threshold for each Federation is reported in parenthesis.

- Aeronautic (FAI) (0.20 g/L)
- Archery (FITA, IPC) (0.10 g/L)
- Automobile (FIA) (0.10 g/L)
- Billiards (WCBS) (0.20 g/L)
- Boules (CMSB, IPC bowls) (0.10 g/L)
- Karate (WKF) (0.10 g/L)
- Modern Pentathlon (UIPM) (0.10 g/L) for disciplines involving shooting
- Motorcycling (FIM) (0.10 g/L)
- Powerboating (UIM) (0.30 g/L)

P2. BETA-BLOCKERS

Unless otherwise specified, beta-blockers are prohibited *in-competition* only, in the following sports.

- Aeronautic (FAI)
- Archery (FITA, IPC) (also prohibited *out-of-competition*)
- Automobile (FIA)
- Billiards (WCBS)
- Bobsleigh (FIBT)
- Boules (CMSB, IPC bowls)
- Bridge (FMB)
- Chess (FIDE)
- Curling (WCF)
- Gymnastics (FIG)
- Motorcycling (FIM)
- Modern Pentathlon (UIPM) for disciplines involving shooting
- Nine-pin bowling (FIQ)
- Sailing (ISAF) for match race helms only
- Shooting (ISSF, IPC) (also prohibited *out-of-competition*)
- Skiing/Snowboarding (FIS) in ski jumping, freestyle aerials/halfpipe and snowboard halfpipe/big air
- Wrestling (FILA)

Beta-blockers include, but are not limited to, the following:

acebutolol, alprenolol, atenolol, betaxolol, bisoprolol, bunolol, carteolol, carvedilol, celiprolol, esmolol, labetalol, levobunolol, metipranolol, metoprolol, nadolol, oxprenolol, pindolol, propranolol, sotalol, timolol.

SPECIFIED SUBSTANCES*

"Specified Substances"* are listed below:

- All inhaled Beta-2 Agonists, except clenbuterol;
- Probenecid;
- Cathine, cropropamide, crotetamide, ephedrine, etamivan, famprofazone, heptaminol, isometheptene, levmethamfetamine, meclofenoxate, p-methylamphetamine, methylephedrine, nikethamide, norfenefrine, octopamine, ortetamine, oxilofrine, phenpromethamine, propylhexedrine, selegiline, sibutramine;
- Cannabinoids;
- All Glucocorticosteroids;
- Alcohol;
- All Beta Blockers.

* *"The Prohibited List may identify specified substances which are particularly susceptible to unintentional anti-doping rule violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents."* A doping violation involving such substances may result in a reduced sanction provided that the *"...Athlete can establish that the Use of such a specified substance was not intended to enhance sport performance..."*

TAB 6



WORLD
ANTI-DOPING
AGENCY

The World Anti-Doping Code

INTERNATIONAL STANDARD FOR TESTING

version 3.0

June 2003

PREAMBLE

World Anti-Doping Code *International Standard* for *Testing* is a mandatory *International Standard* developed as part of the World Anti-Doping Program.

The *International Standard* for *Testing* is extracted from the proposed ISO International Standard for Doping Control (ISO ISDC) which is being prepared by an expert group within the International Anti-Doping Arrangement (IADA) and *WADA*. The ISO ISDC is based on the IADA International Standard for Doping Control (ISDC)/ISO PAS 18873 (1999). *WADA* supports and is an active partner with IADA in developing the Proposed ISO ISDC to a full ISO standard. The ISO process is expected to be completed in mid 2004.

Version 1.0 of the *International Standard* for *Testing* was circulated to *Signatories* and governments for review and comments in November 2002. Version 2.0 was based on the comments and proposals received from *Signatories* and governments.

All *Signatories* and governments were consulted and have had the opportunity to review and provide comments on version 2.0. This draft version 3.0 will be presented for approval to the *WADA* Executive Committee on June 7th 2003.

The official text of the *International Standard* for *Testing* shall be maintained by *WADA* and shall be published in English and French. In the event of any conflict between the English and French versions, the English version shall prevail.

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PART ONE: INTRODUCTION, *CODE* PROVISIONS AND DEFINITIONS

1.0 Introduction and scope

The main purpose of *International Standard* for *Testing* is to plan for effective *Testing* and to maintain the integrity and identity of the *Samples*, from notifying the *Athlete* to transporting *Samples* for analysis.

The *International Standard* for *Testing* includes standards for test distribution planning, notification of *Athletes*, preparing for and conducting *Sample* collection, security/post test administration and transport of *Samples*.

The *International Standard* for *Testing*, including all annexes, is mandatory for all *Signatories* to the *Code*.

The World Anti-Doping Program encompasses all of the elements needed in order to ensure optimal harmonization and best practice in international and national anti-doping programs. The main elements are: the *Code* (Level 1), *International Standards* (Level 2), and Models of Best Practice (Level 3).

In the introduction to the *Code,* the purpose and implementation of the *International Standards* are summarized as follows:

> "*International Standards* for different technical and operational areas within the anti-doping program will be developed in consultation with the *Signatories* and governments and approved by *WADA*. The purpose of the *International Standards* is harmonization among *Anti-Doping Organizations* responsible for specific technical and operational parts of the anti-doping programs. Adherence to the *International Standards* is mandatory for compliance with the *Code*. The *International Standards* may be revised from time to time by the *WADA* Executive Committee after reasonable consultation with the *Signatories* and governments. Unless provided otherwise in the *Code*, *International Standards* and all revisions shall become effective on the date specified in the *International Standard* or revision."

The standards included in the *International Standard* for *Testing* are extracted from the ISO International Standard for Doping Control (ISO ISDC), which also includes management and support processes for *Testing* activities

Definitions specified in the *Code* are written in italics. Additional definitions specific to the *International Standard* for *Testing* are underlined.

2.0 *Code* Provisions

The following articles in the *Code* directly address the *International Standard* for *Testing*:

***Code* Article 2 Anti-Doping Rule Violations:**

2.3 Refusing, or failing without compelling justification, to submit to *Sample* collection after notification as authorized in applicable anti-doping rules or otherwise evading *Sample* collection.

2.4 Violation of applicable requirements regarding *Athlete* availability for *Out-of-Competition Testing* including failure to provide required whereabouts information and missed tests which are declared based on reasonable rules.

2.5 *Tampering*, or *Attempting* to tamper, with any part of *Doping Control.*

2.8 Administration or *Attempted* administration of a *Prohibited Substance* or *Prohibited Method* to any *Athlete*, or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any *Attempted* violation.

***Code* Article 3 Proof of Doping:**

3.2.2 Departures from the *International Standard* for *Testing* which did not cause an *Adverse Analytical Finding* or other anti-doping rule violation shall not invalidate such results. If the *Athlete* establishes that departures from the *International Standard* occurred during *Testing* then the *Anti-Doping Organization* shall have the burden to establish that such departures did not cause the *Adverse Analytical Finding* or the factual basis for the anti-doping rule violation.

***Code* Article 5 *Testing*:**

5.1 Test Distribution Planning. *Anti-Doping Organizations* conducting *Testing* shall in coordination with other *Anti-Doping Organizations* conducting *Testing* on the same *Athlete* pool:

5.1.1 Plan and implement an effective number of *In-Competition* and *Out-of-Competition* tests. Each International Federation shall establish a *Registered Testing Pool* for *International-Level Athletes* in its sport, and each *National Anti-Doping Organization* shall establish a national *Registered Testing Pool* for *Athletes* in its country. The national-level pool shall include *International-Level Athletes* from that country as well as other national-level *Athletes*. Each International Federation and *National Anti-Doping Organization* shall plan and conduct *In-Competition* and *Out-of-Competition Testing* on its *Registered Testing Pool.*

5.1.2 Make *No Advance Notice Testing* a priority.

5.1.3 Conduct *Target Testing.*

5.2 Standards for *Testing*. *Anti-Doping Organizations* conducting *Testing* shall conduct such *Testing* in conformity with the *International Standard* for *Testing.*

Code Article 7 Results Management:

7.3 Further Review of *Adverse Analytical Finding* Where Required by *Prohibited List*. The *Anti-Doping Organization* or other reviewing body established by such organization shall also conduct any follow-up investigation as may be required by the *Prohibited List*. Upon completion of such follow-up investigation, the *Anti-Doping Organization* shall promptly notify the *Athlete* regarding the results of the follow-up investigation and whether or not the *Anti-Doping Organization* asserts that an anti-doping rule was violated.

Code Article 10 Sanctions on Individuals:

10.10 Reinstatement *Testing*. As a condition to regaining eligibility at the end of a specified period of *Ineligibility*, an *Athlete* must, during any period of *Provisional Suspension* or *Ineligibility*, make him or herself available for *Out-of-Competition Testing* by any *Anti-Doping Organization* having *Testing* jurisdiction, and must, if requested, provide current and accurate whereabouts information. If an *Athlete* subject to a period of *Ineligibility* retires from sport and is removed from *Out-of-Competition Testing* pools and later seeks reinstatement, the *Athlete* shall not be eligible for reinstatement until the *Athlete* has notified relevant *Anti-Doping Organizations* and has been subject to *Out-of-Competition Testing* for a period of time equal to the period of *Ineligibility* remaining as of the date the *Athlete* had retired.

Code Article 14 Confidentiality and Reporting:

14.3 *Athlete* Whereabouts Information. *Athletes* who have been identified by their International Federation or *National Anti-Doping Organization* for inclusion in an *Out-of-Competition Testing* pool shall provide accurate, current location information. The International Federations and *National Anti-Doping Organizations* shall coordinate the identification of *Athletes* and the collecting of current location information and shall submit it to *WADA*.

WADA shall make this information accessible to other *Anti-Doping Organizations* having authority to test the *Athlete* as provided in Article 15. This information shall be maintained in strict confidence at all times; shall be used exclusively for purposes of planning, coordinating or conducting *Testing*; and shall be destroyed after it is no longer relevant for these purposes.

14.5 *Doping Control* Information Clearing House. *WADA* shall act as a central clearing house for *Doping Control Testing* data and results for *International-Level Athletes* and national-level *Athletes* that have been included in their *National Anti-Doping Organization's Registered Testing* Pool. To facilitate coordinated test distribution planning and to avoid unnecessary duplication in *Testing* by the various *Anti-Doping Organizations*, each *Anti-Doping Organization* shall report all *In-Competition* and *Out-of-Competition* tests on such *Athletes* to the *WADA* clearinghouse as soon as possible after such tests have been conducted. *WADA* shall make this information accessible to the *Athlete*, the *Athlete's* National Federation, *National Olympic Committee* or National Paralympic Committee, *National Anti-Doping Organization*, International Federation, and the International Olympic Committee or International Paralympic Committee. Private information regarding an *Athlete* shall be maintained by *WADA* in strict confidence. *WADA* shall, at least annually, publish statistical reports summarizing such information.

Code Article 15 Clarification of *Doping Control* Responsibilities:

15.1 *Event Testing*. The collection of *Samples* for *Doping Control* does and should take place at both *International Events* and National *Events*. However, only a single organization should be responsible for initiating and directing *Testing* during an *Event*. At *International Events*, the collection of *Doping Control Samples* shall be initiated and directed by the

international organization which is the ruling body for the *Event* (e.g., the IOC for the Olympic Games, the International Federation for a World Championship, and PASO for the Pan American Games). If the international organization decides not to conduct any *Testing* at such an *Event*, the *National Anti-Doping Organization* for the country where the *Event* occurs may, in coordination with and with the approval of the international organization or *WADA*, initiate and conduct such *Testing*. At National *Events*, the collection of *Doping Control Samples* shall be initiated and directed by the designated *National Anti-Doping Organization* of that country.

15.2 ***Out-of-Competition Testing.*** *Out-of-Competition Testing* is and should be initiated and directed by both international and national organizations. *Out-of-Competition Testing* may be initiated and directed by: (a) *WADA*; (b) the IOC or IPC in connection with the Olympic Games or Paralympic Games; (c) the *Athlete's* International Federation; (d) the *Athlete's National Anti-Doping Organization*; or (e) the *National Anti-Doping Organization* of any country where the *Athlete* is present. *Out-of-Competition Testing* should be coordinated through *WADA* in order to maximize the effectiveness of the combined *Testing* effort and to avoid unnecessary repetitive *Testing* of individual *Athletes*.

15.4 Mutual Recognition. Subject to the right to appeal provided in Article 13, the *Testing*, therapeutic use exemptions and hearing results or other final adjudications of any *Signatory* which are consistent with the *Code* and are within that *Signatory's* authority, shall be recognized and respected by all other *Signatories*. *Signatories* may recognize the same actions of other bodies which have not accepted the *Code* if the rules of those bodies are otherwise consistent with the *Code*.

3.0 Terms and definitions

3.1 Defined terms from the *Code*

Adverse Analytical Finding: A report from a laboratory or other approved *Testing* entity that identifies in a *Specimen* the presence of a *Prohibited Substance* or its *Metabolites* or *Markers* (including elevated quantities of endogenous substances) or evidence of the *Use* of a *Prohibited Method*.

Anti-Doping Organization: A *Signatory* that is responsible for adopting rules, for initiating, implementing or enforcing any part of the *Doping Control* process. This includes, for example, the International Olympic Committee, the International Paralympic Committee, other *Major Event Organizations* that conduct *Testing* at their *Events*, *WADA*, International Federations, and *National Anti-Doping Organizations.*

Athlete: For purposes of *Doping Control*, any *Person* who participates in sport at the international level (as defined by each International Federation) or national level (as defined by each *National Anti-Doping Organization*) and any additional *Person* who participates in sport at a lower level if designated by the *Person's National Anti-Doping Organization*. For purposes of anti-doping information and education, any *Person* who participates in sport under the authority of any *Signatory*, government, or other sports organization accepting the *Code*.

Code: The World Anti-Doping *Code*.

Competition: A single race, match, game or singular athletic contest. For example, the finals of the Olympic 100-meter dash. For stage races and other athletic contests where prizes are awarded on a daily or other interim basis, the distinction between a *Competition* and an *Event* will be as provided in the rules of the applicable International Federation.

Consequences of Anti-Doping Rules Violations: An *Athlete*'s or other *Person's* violation of an anti-doping rule may result in one or more of the following: (a) *Disqualification* means the *Athlete's* results in a particular *Competition* or *Event* are invalidated, with all resulting consequences including forfeiture of any medals, points and prizes; (b) *Ineligibility* means the *Athlete* or other *Person* is barred for a specified period of time from participating in any *Competition* or other activity or funding as provided in Article 10.9; and (c) *Provisional Suspension* means the *Athlete* or other Person is barred temporarily from participating in any *Competition* prior to the final decision at a hearing conducted under Article 8 (Right to a Fair Hearing).

Doping Control: The process including test distribution planning, *Sample* collection and handling, laboratory analysis, results management, hearings and appeals.

Event: A series of individual *Competitions* conducted together under one ruling body (e.g., the Olympic Games, FINA World Championships, or Pan American Games).

In-Competition: For purposes of differentiating between *In-Competition* and *Out-of-Competition Testing*, unless provided otherwise in the rules of an International Federation or other relevant *Anti-Doping Organization*, an *In-Competition* test is a test where an *Athlete* is selected for *Testing* in connection with a specific *Competition*.

Independent Observer Program: A team of observers, under the supervision of *WADA*, who observe the *Doping Control* process at certain *Events* and report on observations. If *WADA* is *Testing In-Competition* at an *Event*, the observers shall be supervised by an independent organization.

Ineligibility: See *Consequences of Anti-Doping Rules Violations* above.

International Event: An *Event* where the International Olympic Committee, the International Paralympic Committee, an International Federation, a *Major Event Organization,* or another international sport organization is the ruling body for the *Event* or appoints the technical officials for the *Event*.

International-Level Athlete: *Athletes* designated by one or more International Federations as being within the *Registered Testing Pool* for an International Federation.

International Standard: A standard adopted by *WADA* in support of the *Code*. Compliance with an *International Standard* (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the *International Standard* were performed properly.

Minor: A natural *Person* who has not reached the age of majority as established by the applicable laws of his or her country of residence.

National Anti-Doping Organization: The entity(ies) designated by each country as possessing the primary authority and responsibility to adopt and implement anti-doping rules, direct the collection of *Samples*, the management of test results, and the conduct of hearings, all at the national level. If this designation has not been made by the competent public authority (ies), the entity shall be the country's *National Olympic Committee* or its designee.

National Olympic Committee: The organization recognized by the International Olympic Committee. The term *National Olympic Committee* shall also include the National Sport Confederation in those countries where the National Sport Confederation assumes typical *National Olympic Committee* responsibilities in the anti-doping area.

No Advance Notice: A *Doping Control* which takes place with no advance warning to the *Athlete* and where the *Athlete* is continuously chaperoned from the moment of notification through *Sample* provision.

Out-of-Competition: Any *Doping Control* which is not *In-Competition*.

Prohibited List: The List identifying the *Prohibited Substances* and *Prohibited Methods*.

Provisional Suspension: See *Consequences* above.

Registered Testing Pool: The pool of top level *Athletes* established separately by each International Federation and *National Anti-Doping Organization* who are subject to both *In-Competition* and *Out-of-Competition Testing* as part of that International Federation's or Organization's test distribution plan.

Sample/Specimen: Any biological material collected for the purposes of *Doping Control*.

Signatories: Those entities signing the *Code* and agreeing to comply with the *Code*, including the International Olympic Committee, International Federations, International Paralympic Committee, *National*

Olympic Committees, National Paralympic Committees, *Major Event Organizations*, *National Anti-Doping Organizations*, and *WADA*.

Target Testing: Selection of *Athletes* for *Testing* where specific *Athletes* or groups of *Athletes* are selected on a non-random basis for *Testing* at a specified time.

Testing: The parts of the *Doping Control* process involving test distribution planning, *Sample* collection, *Sample* handling, and *Sample* transport to the laboratory.

WADA: The World Anti-Doping Agency.

3.2 Defined Terms from the *International Standard* for *Testing*

Blood Collection Official: An official who is qualified to and has been authorized by the *ADO* to collect a blood *Sample* from an *Athlete*.

Chain of Custody: The sequence of individuals or organizations who have the responsibility for a *Sample/specimen* from the provision of the sample/specimen until the *Sample/specimen* has been received for analysis.

Chaperone: An official who is trained and authorized by the *ADO* to carry out specific duties including notification of the *Athlete* selected for *Sample* collection, accompanying and observing the *Athlete* until arrival at the Doping Control Station, and/or witnessing and verifying the provision of the *Sample* where the training qualifies him/her to do so.

Doping Control Officer: An official who has been trained and authorised by the ADO with delegated responsibility for the on-site management of a Sample Collection Session.

Doping Control Station: The location where the Sample Collection Session will be conducted.

Failure to Comply: A term used to describe *Anti-Doping Rule Violations* in Articles 2.3, 2.4, 2.5 and 2.8 of the Code.

Sample Collection Equipment: Containers or apparatus used to directly collect or hold the *Athlete's Specimen* at any time during the *Sample* collection process. *Sample* Collection Equipment shall, as a minimum, consist of:

- For urine *Sample* collection:
 - Collection vessels for collecting the urine *Sample* as it leaves the *Athlete's* body;
 - Sealable and tamper-evident bottles and lids for securing the urine *Sample*;

- For blood *Sample* collection:
 - Needles for collecting the blood *Sample*;
 - Blood tubes with sealable and tamper-evident devices for holding the blood *Sample*.

Sample Collection Personnel: A collective term for qualified officials authorised by the *ADO* who may carry out or assist with duties during the *Sample* Collection Session.

Sample Collection Session: All of the sequential activities that directly involve the *Athlete* from notification until the *Athlete* leaves the Doping Control Station after having provided his/her *Sample/s*.

Weighted: A ranking method of selecting *Athletes* using criteria where the ranking is based on the potential risk of doping and possible doping patterns.

PART TWO: STANDARDS FOR *TESTING*

4.0 Planning

4.1 Objective

The objective is to plan and implement an effective distribution of *Athlete* tests.

4.2 General

Planning starts with establishing criteria for *Athletes* to be included in a *Registered Testing Pool* and ends with selecting *Athletes* for *Sample* collection.

The main activities are information gathering, risk evaluation, and developing, monitoring, evaluating and modifying the test distribution plan.

4.3 Requirements for establishing the *Registered Testing Pool*

4.3.1 The *Anti-Doping Organization* (ADO) shall define and document the criteria for *Athletes* to be included in a *Registered Testing Pool*. This shall include as a minimum:

- For International Federations (IFs):
 Athletes who compete at a high level of international competition, and

- For *National Anti-Doping Organizations*:
 Athletes who are part of national teams in Olympic and Paralympic sports and recognised national federations.

The criteria shall be reviewed at least annually and updated if required.

4.3.2 The *ADO* shall include *Athletes* under their authority in *the Registered Testing Pool* who are serving periods of *Ineligibility* or *Provisional Suspensions* as *Consequences of Anti-Doping Rules Violations*.

4.3.3 The *Registered Testing Pool* shall be reviewed and updated regularly to reflect changes in *Athletes'* competing levels to ensure additions to or removals from the pool as required.

4.4 Requirements for collecting *Athlete* whereabouts information for the purposes of Out of Competition Testing

4.4.1 The *ADO* shall define procedures and/or systems for:

a) Collecting, maintaining and monitoring sufficient whereabouts information to ensure that *Sample* collection can be planned and conducted at *No Advance Notice* for all *Athletes* included in the *Registered Testing Pool,* and

b) When *Athletes* fail to provide accurate and timely whereabouts information, taking appropriate action to ensure the information stays up to date and complete.

4.4.2 As a minimum the following *Athlete* whereabouts information shall be collected:

a) Name

b) Sport/discipline,

c) Home address

d) Contact phone numbers

e) Training times and venues

f) Training camps

g) Travel plans

h) Competition schedule

I) Disability if applicable, including the requirement for third party involvement in notification.

4.5 Requirements for test distribution planning

4.5.1 The *ADO* shall, as a minimum, evaluate the potential risk of doping and possible doping pattern for each sport and/or discipline based on:

a) Physical demands of the sport and possible performance enhancing effect that doping may elicit;

b) Available doping analysis statistics;

c) Available research on doping trends;

d) Training periods and *Competition* season.

4.5.2 The *ADO* shall develop and document a test distribution plan based on information determined in 4.5.1, the number of *Athletes* per sport/discipline in the *Registered Testing Pool* and the evaluation outcomes of previous test distribution planning cycles.

4.5.3 The *ADO* shall allocate the number of *Sample* collections by type of *Sample* collection for each sport/discipline, including *No Advance Notice*, *Out-of-Competition*, *In-Competition*, blood and urine *Sample* collection, as required to achieve effective deterrence.

4.5.4 The *ADO* shall establish a system whereby the test distribution plan is reviewed and, if necessary, updated on a regular basis in order to incorporate new information and take into account *Sample* collection from *Athletes* in the *Registered Testing Pool* by other *ADOs*.

4.5.5 The *ADO* shall establish a system for maintaining test distribution planning data. Such data shall be used to assist with determining whether modifications to the plan are necessary. This information shall include as a minimum:

For each test:

a) The sport/discipline;

b) The country represented by the *Athlete* (if applicable);

c) The type of *Sample* collection (*No Advance Notice, Out-of-Competition, In-Competition* or advance notice);

d) The date of *Sample* collection; and

e) The country in which the *Sample* collection occurred.

In addition, for each *Adverse Analytical Finding*:

a) Dates of *Sample* collection and analysis;

b) Class of substance/s found;

c) Actual substance/s detected;

d) *Sanctions of Anti-Doping Rules Violations*, if any.

4.5.6 The ADO shall ensure that the athlete support personnel shall not be involved in the test distribution planning for their athletes.

4.5.7 In planning and conducting tests at *International Event, and where the relevant IF does not have a doping control program that complies with this standard,* the *National Anti-Doping Organization* shall be the preferred *Sample* collection supplier.

4.6 Requirements for selection of *Athletes*

4.6.1 In accordance with the number of *Sample* collections allocated to each sport/discipline in the test distribution plan, the *ADO* shall select *Athletes* for *Sample* collection using *Target Testing*, Weighted and random selection methods.

4.6.2 As a minimum, the *ADO* shall consider *Target Testing Athletes* based on the following information:

a) Injury;

b) Withdrawal or absence from expected *Competition*;

c) Going into or coming out of retirement;

d) Behaviour indicating doping;

e) Sudden major improvements in performance;

f) Changes in *Athlete* whereabouts information that can indicate a potential increase in the risk of doping, including moving to a remote location;

g) *Athlete* sport performance history;

h) Details of past *Doping Controls*;

i) *Athlete* reinstatement after a period of *Ineligibility*; and

j) Reliable information from a third party.

4.6.3 An *ADO* may select *Athletes under their authority* for *Sample* collection who are not included in the *Registered Testing Pool* defined in 4.3.1 and 4.3.2.

4.6.4 Where the *ADO* authorises a Doping Control Officer (DCO) to select *Athletes* for *Sample* collection, the *ADO* shall provide selection criteria to the DCO in accordance with the test distribution plan.

4.6.5 Following the selection of an *Athlete* for *Sample* collection and prior to notification of the *Athlete*, the *ADO* and/or DCO shall ensure *Athlete* selection decisions are disclosed only to those who need to know in order to ensure the *Athlete* can be notified and tested on a *No Advance Notice* basis.

5.0 Notification of Athletes

5.1 Objective

To ensure that the selected *Athlete* is notified, the rights of the *Athlete* are maintained, there are no opportunities to manipulate the *Sample* to be provided and the notification is documented.

5.2 General

Notification of *Athletes* starts when the *ADO* initiates the notification of the selected *Athlete* and ends when the *Athlete* arrives at the Doping Control Station or when the *Athlete's* possible failure to comply is brought to the *ADO's* attention.

The main activities are:

a) Appointment of DCOs, Chaperones and other *Sample* Collection Personnel;

b) Locating the *Athlete* and confirming his/her identity;

c) Informing the *Athlete* that he/she has been selected to provide a *Sample* and of his/her rights and responsibilities;

d) For *No Advance Notice Sample* collection, continuously chaperoning the *Athlete* from the time of notification to the arrival at the designated Doping Control Station; and

e) Documenting the notification.

5.3 Requirements prior to notification of *Athletes*

5.3.1 *No Advance Notice* shall be the notification method for *Out-of-Competition Sample* collection whenever possible.

5.3.2 To conduct or assist with *Sample* Collection Sessions, the *ADO* shall appoint and authorise *Sample* Collection Personnel who have been trained for their assigned responsibilities, who do not have a conflict of interest in the outcome of the *Sample* collection, and who are not *Minors*.

5.3.3 *Sample* Collection Personnel shall have official identification that is provided and controlled by the *ADO*. The minimum identification requirement is an official card/document naming the *ADO* through which they have been authorised. For DCOs, additional identification requirements shall include their name, their photograph and the card's/document's expiry date. For Blood Collection Officials additional identification requirements include evidence of their professional training in the collection of blood *Samples*.

5.3.4 The *ADO* shall establish criteria to validate the identity of an *Athlete* selected to provide a *Sample*. This ensures the selected *Athlete* is the *Athlete* who is notified.

5.3.5 The *ADO*, DCO or Chaperone, as applicable, shall establish the location of the selected *Athlete* and plan the approach and timing of notification, taking into consideration the specific circumstances of the sport/*Competition* and the situation in question.

5.3.6 For *Out-of-Competition Sample* collection, the *ADO* shall establish criteria to ensure that reasonable attempts are made to notify *Athletes* of their selection for *Sample* collection.

5.3.7 Reasonable attempts shall be defined by the *ADO* and at a minimum shall consider alternative times of day/evening and alternative locations over a specified period of time from the initial notification attempt.

5.3.8 The *ADO* shall establish a system for logging *Athlete* notification attempt/s and outcome/s.

5.3.9 The *Athlete* shall be the first one notified that he/she has been selected for *Sample* collection except where prior contact with a third party is required as specified in 5.3.10.

5.3.10 The *ADO*/DCO/Chaperone, as applicable, shall consider whether a third party is required to be notified prior to notification of the *Athlete* when the *Athlete* is a *Minor*, where required by an *Athlete's* disability as provided for in Annex B - Modifications for *Athletes* with disabilities, or in situations where an interpreter is required for the notification.

5.3.11 If the *Athlete* can not be contacted after having made reasonable attempts using the information supplied in 4.4.2 and logging the attempts in accordance with 5.3.8, the DCO or *ADO*, as applicable, shall institute Annex A – Investigating a possible failure to comply.

5.3.12 The *ADO* shall not re-schedule or change a *Sample* collection from *No Advance Notice* to advance notice except where an unexpected situation forces the need for an advanced notice *Sample* collection. Any such decision shall be recorded.

5.3.13 Notification for advance notice *Sample* collection shall be by any means that indicates the *Athlete* received the notice.

5.4 Requirements for notification of *Athletes*

5.4.1 When initial contact is made, the *ADO*, DCO or Chaperone, as applicable, shall ensure that the *Athlete* and/or a third party if required in accordance with 5.3.10, is informed:

a) That the *Athlete* is required to undergo a *Sample* collection;

b) Of the authority under which the *Sample* collection is to be conducted;

c) Of the type of *Sample* collection and any conditions that need to be adhered to prior to the *Sample* collection;

d) Of the *Athlete's* rights, including the right to:

 i. Have a representative and, if required, an interpreter;

 ii. Ask for additional information about the *Sample* collection process;

 iii. Request a delay in reporting to the Doping Control Station for valid reasons; and

 iv. Request modifications as provided for in Annex B – Modifications for *Athletes* with disabilities.

e) Of the *Athlete's* responsibilities, including the requirement to:

i. Remain within sight of the DCO/Chaperone at all times from the first moment of in-person notification by the DCO/Chaperone until the completion of the *Sample* collection procedure;

ii. Produce identification in accordance with 5.3.4; and

iii. Comply with *Sample* collection procedures and the possible consequences of failure to comply; and

iv. Report to the Doping Control Station, unless delayed for valid reasons, as soon as possible and within 60 minutes of notification for a *No Advance Notice Sample* collection and 24 hours of receipt of notification for an advance notice *Sample* collection.

f) Of the location of the Doping Control Station.

5.4.2 When in-person contact is made, the DCO/Chaperone shall:

a) From this time until the *Athlete* leaves the Doping Control Station at the end of his/her *Sample* Collection Session, keep the *Athlete* under observation at all times.

b) Identify themselves to the *Athlete* using their official *ADO* identification card/document;

c) Confirm the *Athlete's* identity as per the criteria established in 5.3.4. Any failure to confirm the identity of the *Athlete* shall be documented. In such cases, the DCO responsible for conducting the *Sample* Collection Session shall decide whether it is appropriate to report the situation in accordance with Annex A – Investigating a possible failure to comply.

5.4.3 The Chaperone/DCO shall then have the *Athlete* sign an appropriate form to acknowledge and accept the notification. If the *Athlete* refuses to sign that he/she has been notified or evades the notification, the Chaperone/DCO shall inform the *Athlete* of the consequences of failing to comply if possible, and the Chaperone (if not the DCO) shall immediately report all relevant facts to the DCO. When possible the DCO shall continue to collect a *Sample*. The DCO shall document the facts and report the circumstances to the *ADO*. The DCO and *ADO* shall follow the steps prescribed in Annex A – Investigating a possible failure to comply.

5.4.4 The DCO/Chaperone shall consider any reasonable request by the *Athlete* to delay reporting to the Doping Control Station within 60 mins of acknowledgement and acceptance of notification and approve or reject such requests as appropriate in accordance with 5.4.5 and 5.4.6. The DCO shall document the reasons for any such delay that may require further investigation by the *ADO*. The first urine *Sample* post notification shall be collected.

5.4.5 A DCO may accept a request from an *Athlete* to delay reporting to the Doping Control Station beyond 60 mins, and/or once the athlete arrives at the Doping Control Station and wishes to leave if the *Athlete*

can be continuously chaperoned during the delay and if the request relates to the following activities:

a) Participation in a victory ceremony;
b) Fulfilment of media commitments;
c) Competing in further *competitions*;
d) Performing a warm down;
e) Obtaining necessary medical treatment;
f) Locating a representative and/or interpreter.

The DCO shall document the reasons for delay in reporting to the Doping Control Station and/or reasons for leaving the Doping Control Station once arriving that may require further investigation by the *ADO*.

5.4.6 A DCO/Chaperone shall reject a request for delay from an *Athlete* if it will not be possible for the *Athlete* to be continuously chaperoned.

5.4.7 When an *Athlete* notified of an advance notice *Sample* collection does not report to the Doping Control Station at the designated time, the DCO shall use his/her judgement whether to attempt to contact the *Athlete*. At a minimum, the DCO shall wait 30 minutes after the appointed time before departing. If the *Athlete* still has not reported by the time the DCO departs, the DCO shall follow the requirements of Annex A – Investigating a possible failure to comply.

5.4.8 If the *Athlete* reports to the Doping Control Station after the minimum waiting time and prior to the DCO's departure, the DCO shall decide as to whether to process a possible failure to comply. If at all possible the DCO shall proceed with collecting a *Sample*, and shall document the details of the delay in the *Athlete* reporting to the Doping Control Station.

5.4.9 If, while keeping the *Athlete* under observation, *Sample* Collection Personnel observe any matter with potential to compromise the test, the circumstances shall be reported to and documented by the DCO. If deemed appropriate by the DCO, the DCO shall follow the requirements of Annex A – Investigating a possible failure to comply.

6.0 Preparing for the Sample Collection Session

6.1 Objective

To prepare for the *Sample* Collection Session in a manner that ensures that the session can be conducted efficiently and effectively.

6.2 General

Preparing for the *Sample* Collection Session starts with the establishment of a system for obtaining relevant information for effective conduct of the session and ends when it is confirmed that the *Sample* Collection Equipment conforms to the specified criteria.

The main activities are:

a) Establishing a system for collecting details regarding the *Sample* Collection Session;

b) Establishing criteria for who may be authorised to be present during a *Sample* Collection Session;

c) Ensuring that the Doping Control Station meets the minimum criteria prescribed in 6.3.2;

d) Ensuring that *Sample* Collection Equipment used by the *ADO* meets the minimum criteria prescribed in 6.3.4.

6.3 Requirements for preparing for the *Sample* Collection Session

6.3.1 The *ADO* shall establish a system for obtaining all the information necessary to ensure that the *Sample* Collection Session can be conducted effectively, including special requirements to meet the needs of *Athletes* with disabilities as provided in Annex B – Modifications for *Athletes* with disabilities.

6.3.2 The DCO shall use a Doping Control Station which, at a minimum, ensures the *Athlete's* privacy and is used solely as a Doping Control Station for the duration of the *Sample* Collection Session. The DCO shall record any significant deviations from these criteria.

6.3.3 The *ADO* shall establish criteria for who may be authorised to be present during the *Sample* Collection Session in addition to the *Sample* Collection Personnel. At a minimum the criteria shall include:

a) An *Athlete's* entitlement to be accompanied by a representative and/or interpreter during the *Sample* Collection Session except when the *Athlete* is passing a urine *Sample.*

b) A *Minor Athlete's* entitlement, and the witnessing DCO/Chaperone's entitlement to have a representative observe the Chaperone when the *Minor Athlete* is passing a urine *Sample*, but without the representative directly observing the passing of the *Sample* unless requested to do so by the *Minor Athlete*.

c) An *Athlete* with a disability's entitlement to be accompanied by a representative as provided for in Annex B - Modifications for *Athletes* with disabilities.

d) A *WADA* Independent Observer where applicable under the *Independent Observer Program*. The *WADA* Independent Observer shall not directly observe the passing of a urine *Sample*.

6.3.4 The DCO shall only use *Sample* Collection Equipment systems that are authorised by the *ADO,* which at a minimum, shall meet the following criteria. They shall:

a) Have a unique numbering system incorporated into all bottles, containers, tubes or any other item used to seal the *Athlete's Sample*;

b) Have a sealing system that is tamper evident;

c) Ensure the identity of the *Athlete* is not evident from the equipment itself;

d) Ensure that all equipment is clean and sealed prior to use by the *Athlete.*

7.0 Conducting the Sample Collection Session

7.1 Objective

To conduct the *Sample* Collection Session in a manner that ensures the integrity, security and identity of the *Sample* and respects the privacy of the *Athlete.*

7.2 General

The *Sample* Collection Session starts with defining overall responsibility for the conduct of the *Sample* Collection Session and ends once the *Sample* collection documentation is complete.

The main activities are:

a) Preparing for collecting the *Sample*;

b) Collecting the *Sample;* and

c) Documenting the *Sample* collection.

7.3 Requirements prior to *Sample* collection

7.3.1 The *ADO* shall be responsible for the overall conduct of the *Sample* Collection Session with specific responsibilities delegated to the DCO.

7.3.2 The DCO shall ensure that the *Athlete* is informed of his/her rights and responsibilities as specified in 5.4.1.

7.3.3 The DCO shall provide the *Athlete* with the opportunity to hydrate.

7.3.4 The *Athlete* shall only leave the Doping Control Station under continuous observation by the DCO/Chaperone and with the approval of the DCO. The DCO shall consider any reasonable request by the *Athlete* to leave the Doping Control Station, as specified in 5.4.5 and 5.4.6, until the *Athlete* is able to provide a *Sample*.

7.3.5 If the DCO gives approval for the *Athlete* to leave the Doping Control Station, the DCO shall agree with the *Athlete* on:

a) The purpose of the *Athlete* leaving the Doping Control Station; and

b) The time of return (or return upon completion of an agreed activity).

The DCO shall document this information and the actual time of the *Athlete's* departure and return.

7.4 Requirements for *Sample* collection

7.4.1 The DCO shall collect the *Sample* from the *Athlete* according to the following protocol/s for the specific type of *Sample* collection:

a) Annex C: Collection of urine *Samples*

b) Annex D: Collection of blood *Samples*

7.4.2 Any behaviour by the *Athlete* and/or persons associated with the *Athlete* or anomalies with potential to compromise the *Sample* collection shall be recorded. If appropriate, the *ADO* and/or DCO, as applicable, shall institute Annex A – Investigating a possible failure to comply.

7.4.3 If there are doubts as to the origin or authenticity of the *Sample*, the *Athlete* shall be asked to provide an additional *Sample*. If the *Athlete* refuses to provide an additional *Sample* the DCO shall institute Annex A – Investigating a possible failure to comply.

7.4.4 The DCO shall provide the *Athlete* with the opportunity to document any concerns he/she may have about how the session was conducted.

7.4.5 In conducting the *Sample* Collection Session the following information shall be recorded as a minimum:

a) Date, time and type of notification (*No Advance Notice*, advance notice, *In-Competition or Out-of-Competition*);

b) Date and time of *Sample* provision;

c) The name of the *Athlete*;

d) The date of birth of the *Athlete;*

e) The gender of the *Athlete*;

f) The *Athlete's* home address and telephone number;

g) The *Athlete's* sport and discipline;

h) The *Sample* code number;

i) The name and signature of the Chaperone who witnessed the urine *Sample* provision;

j) The name and signature of the Blood Collection Official who collected the blood *Sample*, where applicable;

k) Required laboratory information on the *Sample;*

l) Medications and supplements taken and recent blood transfusion details if applicable, within the timeframe specified by the lab as declared by the *Athlete;*

m) Any irregularities in procedures;

n) *Athlete* comments or concerns regarding the conduct of the session, if provided;

o) The name and signature of the *Athlete*;

p) The name and signature of the *Athlete's* representative, if required; and

q) The name and signature of the DCO.

7.4.6 The *Athlete* and DCO shall sign appropriate documentation to indicate their satisfaction that the documentation accurately reflects the details of the *Athlete's Sample* Collection Session, including any concerns recorded by the *Athlete.* The *Athlete's* representative shall sign on behalf of the *Athlete* if the *Athlete* is a *Minor.* Other persons present who had a formal role during the *Athlete's Sample* Collection Session may sign the documentation as a witness of the proceedings.

7.4.7 The DCO shall provide the *Athlete* with a copy of the records of the Sample Collection Session that have been signed by the *Athlete.*

8.0 Security/Post test administration

8.1 Objective

To ensure that all *Samples* collected at the Doping Control Station and *Sample* collection documentation are securely stored prior to their departure from the Doping Control Station.

8.2 General

Post test administration begins when the *Athlete* has left the Doping Control Station after providing his/her *Sample/s*, and ends with preparation of all of the collected *Samples* and documentation for transport.

8.3 Requirements for Security/post test administration

8.3.1 The *ADO* shall define criteria ensuring that any sealed *Sample* will be stored in a manner that protects its integrity, identity and security prior to transport from the Doping Control Station. The DCO shall ensure that any sealed *Sample* is stored in accordance with these criteria.

8.3.2 Without exception, all *Samples* collected shall be sent for analysis to a *WADA* accredited laboratory or as otherwise approved by *WADA*.

8.3.3 The *ADO*/DCO shall develop a system to ensure that the documentation for each sealed *Sample* is completed and securely handled.

8.3.4 The *ADO* shall develop a system to ensure that, where required, instructions for the type of analysis to be conducted are provided to the *WADA* accredited laboratory or as otherwise approved by *WADA*.

9.0 Transport of Samples and documentation

9.1 Objective

a) To ensure that *Samples* and related documentation arrive at the *WADA* accredited laboratory or as otherwise approved by *WADA* in proper condition to do the necessary analysis, and

b) To ensure the *Sample* Collection Session documentation is sent by the DCO to the *ADO* in a secure and timely manner.

9.2 General

Transport starts when the sealed *Samples* and documentation leave the Doping Control Station and ends with the confirmed receipt of the *Samples* and *Sample* collection documentation at their intended destinations.

The main activities are arranging for the secure transport of *Samples* and related documentation to the *WADA* accredited laboratory or as otherwise approved by *WADA*, and arranging for the secure transport of *Sample* collection documentation to the *ADO*.

9.3 Requirements for transport of *Samples* and documentation

9.3.1 The *ADO* shall authorise a transport system that ensures *Samples* and documentation will be transported in a manner that protects their integrity, identity and security.

9.3.2 The *ADO* shall develop a system for recording the Chain of Custody of the *Samples* and *Sample* collection documentation which includes confirming that both the *Samples* and *Sample* collection documentation have arrived at their intended destinations.

9.3.3 Sealed *Samples* shall always be transported to the *WADA* accredited laboratory or as otherwise approved by *WADA*, using the *ADO's* authorised transport method as soon as practicable after the completion of the *Sample* Collection Session.

9.3.4 Documentation identifying the *Athlete* shall not be included with the *Samples* or documentation sent to the *WADA* accredited laboratory or as otherwise approved by *WADA*.

9.3.5 The DCO shall send all relevant *Sample* Collection Session documentation to the *ADO* using the *ADO's* authorised transport method as soon as practicable after the completion of the *Sample* Collection Session.

9.3.6 Chain of Custody shall be checked by the *ADO* if receipt of either the *Samples* with accompanying documentation or *Sample* collection documentation is not confirmed at their intended destination or a *Sample's* integrity or identity may have been compromised during transport. In this instance, the *ADO* shall consider whether the *Sample* should be voided.

PART THREE: ANNEXES

Annex A - Investigating a possible failure to comply

A.1 Objective

To ensure that any matters occurring before, during or after a *Sample* Collection Session that may lead to a determination of a failure to comply are assessed, acted upon and documented.

A.2 Scope

Investigating a possible failure to comply begins when the *ADO* or a DCO becomes aware of a matter with the potential to compromise an *Athlete*'s test and ends when the *ADO* takes appropriate follow-up action based on the outcomes of its investigation into the possible failure to comply.

A.3 Responsibility

A.3.1 The *ADO* is responsible for ensuring that:

a) Any matters with the potential to compromise an Athlete's test are assessed to determine if a possible failure to comply has occurred;

b) All relevant information, including information from the immediate surroundings when applicable, is obtained as soon as possible or when practicable to ensure that all knowledge of the matter can be reported and be presented as possible evidence; and

c) Appropriate documentation is completed to report any possible failure to comply.

A.3.2 *Sample* Collection Personnel are responsible for reporting to the DCO any matter with the potential to compromise a test, and the DCO is responsible for reporting such matters to the *ADO*.

A.4 Requirements

A.4.1 Any matters with the potential to compromise the test shall be reported as soon as practicable.

A.4.2 If the matter has potential to compromise the test, the *Athlete* shall be notified if possible:

a) Of the possible consequences;

b) That a possible failure to comply will be investigated by the *ADO* and appropriate follow-up action will be taken.

A.4.3 The necessary information about the possible failure to comply shall be obtained from all relevant sources as soon as possible and recorded.

A.4.4 If possible, the *Athlete*'s *Sample* Collection Session shall be completed.

A.4.5 The *ADO* shall establish a system for ensuring that the outcomes of its investigation into the possible failure to comply are considered for results management action and, if applicable, for further planning and *Testing*.

Annex B - Modifications for *Athletes* with disabilities

B.1 Objective

To ensure that the special needs of *Athletes* with disabilities are provided as much as possible in relation to the provision of a *Sample*.

B.2 Scope

The scope of determining whether modifications need to be considered starts with identification of situations where *Sample* collection involves *Athletes* with disabilities and ends with the necessary modifications to *Sample* collection procedures and equipment as possible for these *Athletes*.

B.3 Responsibility

The *ADO* has responsibility for ensuring, when possible, that the DCO has any information and *Sample* Collection Equipment necessary to conduct a *Sample* Collection Session with an *Athlete* with a disability. The DCO has responsibility for the *Sample* collection.

B.4 Requirements

B.4.1 All aspects of notification and *Sample* collection for *Athletes* with disabilities shall be carried out in accordance with the standard notification and *Sample* collection procedures unless modifications are necessary due to the *Athlete*'s disability.

B.4.2 In planning or arranging *Sample* collection, the *ADO* and DCO shall consider whether there will be any *Sample* collection for *Athletes* with disabilities that may require modifications to the standard procedures for notification or *Sample* collection, including *Sample* Collection Equipment and facilities.

B.4.3 The DCO shall have the authority to make modifications as the situation requires when possible and as long as such modifications will not compromise the identity, security or integrity of the *Sample*.

B.4.4 For *Athletes* with a physical disability or a sensorial disability, the *Athlete* can be assisted by the *Athlete*'s representative or *Sample* Collection Personnel during the *Sample* Collection Session where authorised by the *Athlete* and agreed to by the DCO.

B.4.5 For *Athletes* with an intellectual disability, the *ADO* or DCO shall determine whether the *Athlete* must have a representative at the *Sample* Collection Session and the nature of the assistance that the representative must provide. Additional assistance can be provided by the representative or *Sample* Collection Personnel during the *Sample* Collection Session where authorised by the *Athlete* and agreed to by the DCO.

B.4.6 The DCO can decide that alternative *Sample* Collection Equipment or facilities will be used when required to enable the *Athlete* to provide the *Sample* as long as the *Sample*'s identity, security and integrity will not be affected.

B.4.7 *Athletes* who are using urine collection or drainage systems are required to eliminate existing urine from such systems before providing a urine *Sample* for analysis.

B.4.8 The DCO will record modifications made to the standard *Sample* collection procedures for *Athletes* with disabilities, including any applicable modifications specified in the above actions.

Annex C - Collection of urine *Samples*

C.1 Objective

To collect an *Athlete*'s urine *Sample* in a manner that ensures:

a) Consistency with relevant principles of internationally recognised standard precautions in healthcare settings so that the health and safety of the *Athlete* and *Sample* Collection Personnel are not compromised;

b) The *Sample* is of a quality and quantity that meets laboratory guidelines;

c) The *Sample* is clearly and accurately identified; and

d) The *Sample* is securely sealed.

C.2 Scope

The collection of a urine *Sample* begins with ensuring the *Athlete* is informed of the *Sample* collection requirements and ends with discarding any residual urine remaining at the end of the *Athlete's Sample* Collection Session.

C.3 Responsibility

The DCO has the responsibility for ensuring that each *Sample* is properly collected, identified and sealed. The DCO/Chaperone has the responsibility for directly witnessing the passing of the urine *Sample*.

C.4 Requirements

C.4.1 The DCO shall ensure that the *Athlete* is informed of the requirements of the *Sample* collection, including any modifications as provided for in Annex B – Modifications for *Athletes* with disabilities.

C.4.2 The DCO shall ensure that the *Athlete* is offered a choice of appropriate equipment for collecting the *Sample*. If the nature of an *Athlete*'s disability requires that he/she must use additional or other equipment as provided for in Annex B – Modifications for *Athletes* with disabilities, the DCO shall inspect that equipment to ensure that it will not affect the identity or integrity of the *Sample*.

C.4.3 The DCO shall instruct the *Athlete* to select a collection vessel.

C.4.4 When the *Athlete* selects a collection vessel and for selection of all other *Sample* Collection Equipment that directly holds the urine *Sample*, the DCO will instruct the *Athlete* to check that all seals on the selected equipment are intact and the equipment has not been tampered with. If the *Athlete* is not satisfied with the selected equipment, he/she may select another. If the *Athlete* is not satisfied with any of the equipment available for the selection, this shall be recorded by the DCO.

If the DCO does not agree with the *Athlete*'s opinion that all of the equipment available for the selection is unsatisfactory, the DCO shall instruct the *Athlete* to proceed with the *Sample* Collection Session. If the DCO agrees with the reasons put forward by the *Athlete* that all of the equipment available for the selection is unsatisfactory, the DCO shall terminate the collection of the *Athlete*'s urine *Sample* and this shall be recorded by the DCO.

C.4.5 The *Athlete* shall retain control of the collection vessel and any *Sample* provided until the *Sample* is sealed, unless assistance is required by an *Athlete*'s disability as provided for in Annex B – Modifications for *Athletes* with disabilities.

C.4.6 The DCO/Chaperone who witnesses the passing of the *Sample* shall be of the same gender as the *Athlete* providing the *Sample*.

C.4.7 The DCO/Chaperone and *Athlete* shall proceed to an area of privacy to collect a *Sample*.

C.4.8 The DCO/Chaperone shall witness the *Sample* leaving the *Athlete*'s body and record the witnessing in writing.

C.4.9 The DCO shall use the relevant laboratory's specifications to verify, in full view of the *Athlete*, that the volume of the urine *Sample* satisfies the laboratory's requirements for analysis.

C.4.10 Where the volume of urine is insufficient, the DCO shall conduct a partial *Sample* collection procedure as prescribed in Annex E – Urine *Samples* – insufficient volume.

C.4.11 The DCO shall instruct the *Athlete* to select a *Sample* collection kit containing A and B bottles in accordance with C.4.4.

C.4.12 Once a *Sample* collection kit has been selected, the DCO and the *Athlete* shall check that all code numbers match and that this code number is recorded accurately by the DCO.

If the *Athlete* or DCO finds that the numbers are not the same, the DCO shall instruct the *Athlete* to choose another kit in accordance with C.4.4. The DCO shall record the matter.

C.4.13 The *Athlete* shall pour the relevant laboratory's prescribed minimum volume of urine into the B bottle, and then fill the A bottle as much as possible. The *Athlete* shall then fill the B bottle as much as possible with the remaining urine. The *Athlete* shall ensure that a small amount of urine is left in the collection vessel.

C.4.14 The *Athlete* shall seal the bottles as directed by the DCO. The DCO shall check, in full view of the *Athlete*, that the bottles have been properly sealed.

C.4.15 The DCO shall use the relevant laboratory's guidelines for pH and specific gravity to test the residual urine in the collection vessel to determine if the *Sample* is likely to meet the laboratory guidelines. If it is

not, then the DCO shall follow Annex F - Urine *Samples* - *Samples* that do not meet laboratory pH and specific gravity guidelines.

C.4.16 The DCO shall ensure any residual urine that will not be sent for analysis is discarded in full view of the *Athlete*.

Annex D - Collection of blood Samples

D.1 Objective

To collect an *Athlete*'s blood *Sample* in a manner that ensures:

a) The health and safety of the *Athlete* and *Sample* Collection Personnel are not compromised;

b) The *Sample* is of a quality and quantity that meets the relevant analytical guidelines;

c) The *Sample* is clearly and accurately identified; and

d) The *Sample* is securely sealed.

D.2 Scope

The collection of a blood *Sample* begins with ensuring the *Athlete* is informed of the *Sample* collection requirements and ends with properly storing the *Sample* prior to dispatch for analysis at the *WADA* accredited laboratory or as otherwise approved by *WADA*.

D.3 Responsibility

D.3.1 The DCO has the responsibility for ensuring that:

a) Each *Sample* is properly collected, identified and sealed; and

b) All *Samples* have been properly stored and dispatched in accordance with the relevant analytical guidelines.

D.3.2 The Blood Collection Official has the responsibility for collecting the blood *Sample*, answering related questions during the provision of the *Sample*, and proper disposal of used blood sampling equipment not required for completing the *Sample* Collection Session.

D.4 Requirements

D.4.1 Procedures involving blood shall be consistent with relevant principles of internationally recognised standard precautions in health care settings.

D.4.2 Blood *Sample* Collection Equipment shall consist of, either an A sample tube, or an A sample tube and a B sample tube. If the sample collection consists solely of blood then a B sample shall be collected and used as a confirmation if required.

D.4.3 The DCO shall ensure that the *Athlete* is informed of the requirements of the *Sample* collection, including any modifications as provided for in Annex B – Modifications for *Athletes* with disabilities.

D.4.4 The DCO/Chaperone and *Athlete* shall proceed to the area where the *Sample* will be provided.

D.4.5 The DCO shall ensure the *Athlete* is offered comfortable conditions including being in a relaxed position for at least 10 minutes prior to providing a *Sample*.

D.4.6 The DCO shall instruct the *Athlete* to select the *Sample* collection kit/s required for collecting the *Sample* and to check that the selected equipment has not been tampered with and the seals are intact. If the *Athlete* is not satisfied with a selected kit, he/she may select another. If the *Athlete* is not satisfied with any kits and no others are available, this shall be recorded by the DCO.

If the DCO does not agree with the *Athlete*'s opinion that all of the available kits are unsatisfactory, the DCO shall instruct the *Athlete* to proceed with the *Sample* Collection Session.

If the DCO agrees with the reasons put forward by the *Athlete* that all available kits are unsatisfactory, the DCO shall terminate the collection of the *Athlete*'s blood *Sample* and this shall be recorded by the DCO.

D.4.7 When a *Sample* collection kit has been selected, the DCO and the *Athlete* shall check that all code numbers match and that this code number is recorded accurately by the DCO.

If the *Athlete* or DCO finds that the numbers are not the same, the DCO shall instruct the *Athlete* to choose another kit in accordance with D.4.5. The DCO shall record the matter.

D.4.8 The Blood Collection Official shall clean the skin with a sterile disinfectant wipe or swab in a location unlikely to adversely affect the *Athlete* or his/her performance and, if required, apply a tourniquet. The Blood Collection Official shall take the blood *Sample* from a superficial vein into the final collection container. The tourniquet, if applied, shall be immediately removed after the venipuncture has been made.

D.4.9 The amount of blood removed shall be adequate to satisfy the relevant analytical requirements for the *Sample* analysis to be performed.

D.4.10 If the amount of blood that can be removed from the *Athlete* at the first attempt is insufficient, the Blood Collection Official shall repeat the procedure. Maximum attempts shall be three. Should all attempts fail, then the Blood Collection Official shall inform the DCO. The DCO shall terminate the collection of the blood *Sample* and record this and the reasons for terminating the collection.

D.4.11 The Blood Collection Official shall apply a dressing to the puncture site/s.

D.4.12 The Blood Collection Official shall dispose of used blood sampling equipment not required for completing the *Sample* Collection Session.

D.4.13 The *Athlete* shall seal his/her *Sample* into the *Sample* collection kit as directed by the DCO. In full view of the *Athlete*, the DCO shall check that the sealing is satisfactory.

D.4.14 The sealed *Sample* shall be kept at a cool, but not freezing, temperature prior to analysis at the Doping Control Station or dispatch for analysis at the *WADA* accredited laboratory or as otherwise approved by *WADA*.

Annex E - Urine *Samples* - Insufficient volume

E.1 Objective

To ensure that where an insufficient volume of urine is provided, appropriate procedures are followed.

E.2 Scope

The procedure begins with informing the *Athlete* that the *Sample* is of insufficient volume and ends with the provision of a *Sample* of sufficient volume.

E.3 Responsibility

The DCO has the responsibility for declaring the *Sample* volume insufficient and for collecting the additional *Sample*/s to obtain a combined *Sample* of sufficient volume.

E.4 Requirements

E.4.1 If the *Sample* collected is of insufficient volume, the DCO shall inform the *Athlete* that a further *Sample* shall be collected to meet the relevant laboratory's volume requirements.

E.4.2 The DCO shall instruct the *Athlete* to select partial *Sample* Collection Equipment in accordance with C.4.4.

E.4.3 The DCO shall then instruct the *Athlete* to open the relevant equipment, pour the insufficient *Sample* into the container and seal it as directed by the DCO. The DCO shall check, in full view of the *Athlete*, that the container has been properly sealed.

E.4.4 The DCO and the *Athlete* shall check that the equipment code number, and the volume and identity of the insufficient *Sample* are recorded accurately by the DCO. Either the *Athlete* or the DCO shall retain control of the sealed partial *Sample*.

E.4.5 While waiting to provide an additional *Sample*, the *Athlete* shall remain under continuous observation and be given the opportunity to hydrate.

E.4.6 When the *Athlete* is able to provide an additional *Sample*, the procedures for collection of the *Sample* shall be repeated as prescribed in Annex C – Collection of urine *Samples* until a sufficient volume of urine will be provided by combining the initial and additional *Sample*/s.

E.4.7 When the DCO is satisfied that a sufficient volume of urine has been provided, the DCO and *Athlete* shall check the integrity of the seal/s on the partial *Sample* container/s containing the previously provided insufficient *Sample*/s. Any irregularity with the integrity of the seal/s will

be recorded by the DCO and investigated according to Annex A – Investigating a possible failure to comply.

E.4.8 The DCO shall then direct the *Athlete* to break the seal/s and combine the *Samples*, ensuring that additional *Samples* are added sequentially to the first *Sample* collected until the required volume is met.

E.4.9 The DCO and *Athlete* shall then continue with C.4.11.

Annex F - Urine Samples - Samples that do not meet laboratory pH or specific gravity guidelines

F.1 Objective

To ensure that when the urine *Sample* does not meet the contracted laboratory pH or specific gravity guidelines, appropriate procedures are followed.

F.2 Scope

The procedure begins with the DCO informing the *Athlete* that a further *Sample* is required and ends with the collection of a *Sample* that meets laboratory pH and specific gravity guidelines or appropriate follow-up action by the *ADO* if required.

F.3 Responsibility

The *ADO* is responsible for establishing criteria for the number of additional *Samples* to be collected at the *Athlete's* *Sample* Collection Session. If the additional *Sample/s* collected do not meet the relevant laboratory's guidelines for analysis, the *ADO* is responsible for scheduling a new *Sample* Collection Session for the *Athlete* and, if required, taking subsequent appropriate action.

The DCO is responsible for collecting additional *Sample/s* in accordance with the *ADO's* criteria.

F.4 Requirements

F.4.1 The *ADO* shall establish criteria for the number of additional *Samples* to be collected by the DCO when the DCO determines that an *Athlete's* *Sample* is unlikely to meet the relevant laboratory's pH or specific gravity guidelines.

F.4.2 The DCO shall inform the *Athlete* that he/she is required to provide a further *Sample*.

F.4.3 While waiting to provide an additional *Sample*, the *Athlete* shall remain under continuous observation.

F.4.4 When the *Athlete* is able to provide an additional *Sample*, the DCO shall repeat the procedures for collection of the *Sample* as prescribed in Annex C – Collection of urine *Sample* and in accordance with the *ADO's* criteria for the number of additional *Samples* to be collected as established in F.4.1.

F.4.5 The DCO shall record that the *Samples* collected belong to a single *Athlete* and the order in which the *Samples* were provided.

F.4.6 The DCO shall then continue with C.4.16.

F.4.7 If it is determined by the relevant laboratory that all of the *Athlete's Samples* do not meet the laboratory's pH and specific gravity requirements for analysis and this is not related to natural causes, the *ADO* shall schedule another *Sample* Collection Session for the *Athlete* as *Target Testing* as soon as possible.

F.4.8 If the *Target Testing Sample* Collection Session also results in *Samples* that do not meet the laboratory's pH and/or specific gravity requirements for analysis, the *ADO* shall investigate a possible anti-doping rule violation.

Annex G - Sample Collection Personnel Requirements

G.1 Objective

To ensure that Sample Collection Personnel have no conflict of interest and have adequate qualifications and experience to conduct *Sample* collection sessions.

G.2 Scope

Sample Collection Personnel requirements starts with the development of the necessary competencies for Sample Collection Personnel and ends with the provision of identifiable accreditation.

G.3 Responsibility

The *ADO* has the responsibility for all activities defined in this Annex G.

G.4 Requirements - Qualifications and Training

G.4.1 The *ADO* shall determine the necessary competence and qualification requirements for the positions of Doping Control Officer, Chaperone and Blood Collection Official. The *ADO* shall develop duty statements for all Sample Collection Personnel that outline their respective responsibilities. As a minimum:

a) Sample Collection Personnel shall be of adult age.
b) Blood Collection Officials shall have adequate qualifications and practical skills required to perform blood collection from a vein.

G.4.2 The *ADO* shall ensure that Sample Collection Personnel that have an interest in the outcome of the collection or testing of a *Sample* from any *Athlete* who might provide a *Sample* at a session are not appointed to that *Sample* collection session. Sample Collection Personnel are deemed to have an interest in the collection of a *Sample* if they are:

a) Involved in the planning of the sport for which testing is being conducted; or
b) Related to, or involved in the personal affairs of any *Athlete* who might provide a *Sample* at that session.

G.4.3 The *ADO* shall establish a system that ensures that Sample Collection Personnel are adequately qualified and trained to carry out their duties.

G.4.4 The training program for Chaperones and Blood Collection Officiers as a minimum shall include studies of all relevant requirements of the testing process and familiarization of relevant standard precautions in healthcare settings.

G.4.5 The training program for Doping Control Officers as a minimum shall include:

a) Comprehensive theoretical training in different types of testing activities relevant to the Doping Control Officer position;
b) One observation of all doping control activities related to requirements in this standard, preferably on site;
c) The satisfactory performance of one complete *Sample* collection on site under observation by a qualified Doping Control Officer or similar. The requirement related to actual passing of *Sample* shall not be included in the on site observations.

G.4.6 The *ADO* shall maintain records of education, training, skills and experience.

G.5 Requirements - Accreditation, re-accreditation and delegation

G.5.1 The *ADO* shall establish a system for accrediting and re-accrediting Sample Collection Personnel.

G.5.2 The *ADO* shall ensure that *Sample* Collection Personnel have completed the training program and are familiar with the requirements in this testing standard before granting accreditation.

G.5.3 Accreditation shall only be valid for a maximum of two years. *Sample* Collection Personnel shall be required to repeat a full training program if they have not participated in *Sample* collection activities within the year prior to re-accreditation.

G.5.4 Only Sample Collection Personnel that have an accreditation recognised by the ADO shall be authorised by the ADO to conduct *Sample* collection activities on behalf of the ADO.

G.5.5 Doping Control Officers may personally perform any activities involved in the *Sample* Collection Session, with the exception of blood collection unless particularly qualified, or they may direct a Chaperone to perform specified activities that fall within the scope of the Chaperone's authorised duties.

TAB 7

CODE ANTIDOPAGE DU MOUVEMENT OLYMPIQUE

OLYMPIC MOVEMENT ANTI-DOPING CODE

1999

ic de substances interdites est sanctionné comme suit:

· de trafic de substances interdites, la sanction sera la suspension à vie de toute on, à quelque titre que se soit, à une organisation, un organe, une activité ou une ion sportive.

, toute personne physique ou morale intéressée, à sa diligence, pourra saisir les dministratives et judiciaires compétentes des faits reprochés.

ıtative de trafic sera punie comme le fait lui-même;

es personnes coupables de trafic, l'ignorance de la nature ou de la composition nces interdites ou de la nature ou des effets des méthodes en question ne as une circonstance atténuante ou absolutoire.

ıctions prévues au présent code peuvent être cumulées dans la mesure de leur ité et s'accompagner de mesures prescrivant des contrôles périodiques ou e l'athlète sanctionné pour une période déterminée.

age intentionnel pourra être prouvé par tous moyens y compris la présomption.

nant l'usage des stéroïdes anabolisants androgènes, les preuves obtenues à par- ils métaboliques et/ou de l'étude des rapports isotopiques pourront être utilisées r des conclusions définitives.

ncentration d'épitestostérone dans l'urine supérieure à 200 nanogrammes par evra faire l'objet d'examens identiques à ceux prévus à l'article I.C.1.b. de : B pour la testostérone.

site ou l'échec de l'usage d'une substance ou d'une méthode interdite n'est pas Il suffit que l'on ait utilisé ou tenté d'utiliser ladite substance ou méthode pour tion soit considérée comme consommée.

6. The penalties for trafficking in Prohibited Substances are as follows:

a) In the event of trafficking in Prohibited Substances the penalty will be suspension for life from participation in any sports organization, body, activity or event in any capacity whatsoever.

In addition, the offence(s) may be reported to the competent administrative and judicial authorities by any interested physical or legal person.

Any attempt to perform trafficking shall be penalized in the same manner as the act itself.

b) For persons found guilty of trafficking, ignorance of the nature or composition of the Prohibited Substances or the nature or effects of the methods in question does not constitute attenuating circumstances or grounds for exemption from punishment.

7. The penalties set out in this Code may be applied concurrently insofar as they are compatible and may be accompanied with measures prescribing regular or unannounced tests of the athlete concerned over a specified period of time.

Article 4:

1. Intentional doping can be proved by any means whatsoever, including presumption.

2. Evidence obtained from metabolic profiles and/or isotopic ratio measurements may be used to draw definitive conclusions regarding the use of anabolic androgenic steroids.

3. An epitestosterone concentration in the urine greater than 200 nanograms per millilitre will be investigated by studies as in Article (I.C .I b) of Appendix B for testosterone.

4. The success or failure of the use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibiteed Method was used or attempted for the offence of doping to be considered as consummated.

TAB 8



WORLD
ANTI-DOPING
AGENCY

The World Anti-Doping Code

INTERNATIONAL STANDARD FOR LABORATORIES

Version 4.0

August 2004

PREAMBLE

The World Anti-Doping *Code International Standard* for Laboratories is a mandatory level 2 *International Standard* developed as part of the World Anti-Doping Program.

The basis for the *International Standard* for Laboratories is the relevant Sections in the Olympic Movement Anti-Doping *Code*. An expert group, together with a *WADA* Laboratory Accreditation Committee, has prepared the document and drafts have been circulated for initial review and comment from all IOC accredited doping Laboratories and the IOC Sub-Commission on Doping and Biochemistry of Sport.

Version 1.0 of the *International Standard* for Laboratories was circulated to *Signatories,* governments and accredited laboratories for review and comments in November 2002. Version 2.0 was based on the comments and proposals received from these stakeholders.

All *Signatories,* governments and Laboratories were consulted and have had the opportunity to review and provide comments to version 2.0. This draft version 3.0 was presented for approval to the *WADA* Executive Committee on June 7th 2003.

The *International Standard* for Laboratories will come into effect on January 1st 2004.

Currently, Laboratories are accredited by the International Olympic Committee (IOC). As part of the transition of the program from existing IOC accreditation to *WADA* accreditation, accreditation bodies shall require the Laboratories to which they grant and maintain accreditation to comply with the requirements of the *International Standard* for Laboratories and ISO/IEC 17025 by January 1st, 2004. For Laboratories moving from IOC to *WADA* accreditation (see Section 4.1.7), an internal audit before January 1st, 2004 shall be deemed compliant with the *International Standard* for Laboratories. The next ISO surveillance or re-accreditation audit conducted by the national accrediting body in 2004 shall document compliance with the *International Standard* for Laboratories. Laboratories seeking initial *WADA* accreditation shall have an on-site accreditation audit by their national accrediting body compliant with this standard before receiving *WADA* accreditation.

The official text of the *International Standard* for Laboratories shall be maintained by *WADA* and shall be published in English and French. In the event of any conflict between the English and French versions, the English version shall prevail.

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PART ONE: INTRODUCTION, *CODE* PROVISIONS AND DEFINITIONS

1.0 Introduction, Scope and References

The main purpose of the *International Standard* for Laboratories is to ensure laboratory production of valid test results and evidentiary data and to achieve uniform and harmonized results and reporting from all accredited *Doping Control* Laboratories.

The *International Standard* for Laboratories includes requirements for *WADA* accreditation of doping laboratories, operating standards for laboratory performance and description of the accreditation process.

The *International Standard* for Laboratories, including all Annexes and Technical Documents, is mandatory for all *Signatories* to the *Code*.

The World Anti-Doping Program encompasses all of the elements needed in order to ensure optimal harmonization and best practice in international and national anti-doping programs. The main elements are: the *Code* (Level 1), *International Standards* (Level 2), and Models of Best Practice (Level 3).

In the introduction to the World Anti-Doping *Code (Code),* the purpose and implementation of *the* International *Standards* are summarized as follows:

> "*International Standards* for different technical and operational areas within the anti-doping program will be developed in consultation with the *Signatories* and governments and approved by *WADA*. The purpose of the *International Standards* is harmonization among *Anti-Doping Organizations* responsible for specific technical and operational parts of the anti-doping programs. Adherence to the *International Standards* is mandatory for compliance with the *Code*. The *International Standards* may be revised from time to time by the *WADA* Executive Committee after reasonable consultation with the *Signatories* and governments. Unless provided otherwise in the *Code*, *International Standards* and all revisions shall become effective on the date specified in the *International Standard* or revision."

Compliance with an *International Standard* (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures covered by the *International Standard* were performed properly.

This document sets out the requirements for *Doping Control* Laboratories that wish to demonstrate that they are technically competent, operate an effective quality management system, and are able to produce forensically valid results. *Doping Control Testing* involves the detection, identification, and in some cases demonstration of the presence greater than a threshold concentration of drugs and other substances deemed to be prohibited by the list of *Prohibited Substances* and *Prohibited Methods* (*The Prohibited List*) in human biological fluids or tissues.

The Laboratory accreditation framework consists of two main elements: Part Two of the standard: the Laboratory accreditation requirements and operating standards; and Part Three: the Annexes and Technical Documents. Part Two describes the requirements necessary to obtain *WADA* recognition and the procedures involved to fulfill the requirements. It also contains an application of the ISO/IEC 17025 standard to the field of *Doping Control*. The purpose of this section of the document is to facilitate consistent application and assessment of the ISO/IEC 17025 and the specific *WADA* requirements for *Doping Control* by accreditation bodies that operate in accordance with ISO/IEC Guide 58. The *International Standard* also sets forth the requirements for *Doping Control* Laboratories when adjudication results as a consequence of an *Adverse Analytical Finding*

Part Three of the Standard includes all Annexes. Annex A describes the *WADA* Proficiency Testing Program, including performance criteria necessary to maintain good standing in proficiency testing. Annex B describes the ethical standards required for continued *WADA* recognition of the Laboratory. Annex C is a list of Technical Documents. Technical Documents are issued, modified, and deleted by *WADA* from time to time and provide direction to the Laboratories on specific technical issues. Once promulgated, Technical Documents become part of the *International Standard* for Laboratories. The incorporation of the provisions of the Technical Documents into the Laboratory's quality management system is mandatory for *WADA* accreditation.

In order to harmonize the accreditation of Laboratories to the requirements of ISO/IEC 17025 and the *WADA*-specific requirements for recognition, it is expected that national accreditation bodies will use this standard, including the annexes, as a reference document in their accreditation audit process.

Terms defined in the *Code*, which are included in this standard, are written in italics. Terms, which are defined in this standard, are underlined.

References

These following references were consulted in the development of this document. The specific requirements and concepts of these documents do not supersede or otherwise change the requirements stated in the *International Standard* for Laboratories

A2LA, 2001. Proficiency Testing Requirement for Accredited Testing and Calibration Laboratories.

EA-03/04 (August 2001). Use of Proficiency Testing as a Tool for Accreditation in Testing

Eurachem Proficiency Testing Mirror Group (2000). Selection, Use and Interpretation of Proficiency Testing (PT) Schemes by Laboratories.

Eurachem/CITAC Guide, 2nd Edition (2000) Quantifying Uncertainty in Analytical Measurement.

European Union Decision 2002/657/EC Official Journal of the European Communities 17.8.2002; L 221: 8-36.

ISO/IEC 17025:1999. General requirements for the competence of testing and calibration laboratories.

International Laboratory Accreditation Cooperation (ILAC) Document G-7:1996. Accreditation Requirements and Operating Criteria for Horseracing Laboratories.

ILAC Document G-15:2001. Guidance for Accreditation to ISO/IEC 17025

ILAC Document G-17:2002. Introducing the Concept of Uncertainty of Measurement in Testing in Association with the Application of the Standard ISO/IEC 17025.

ILAC Document G-19:2002. Guideline for Forensic Science Laboratories

ILAC Document P-10:2002. ILAC Policy on Traceability of Measurement Results.

National Clinical Chemistry Laboratory Standards Document C-43A, 2002 [ISBN 1-56238-475-9]. "Gas Chromatography/Mass Spectrometry (GC/MS) Confirmation of Drugs; Approved Guideline."

Olympic Movement Anti-Doping Code (1999)

Society of Forensic Toxicology and American Academy of Forensic Sciences, Toxicology Section, 2002 (Draft). Forensic Toxicology Laboratory Guidelines.

Substance Abuse and Mental Health Services Administration (SAMHSA), United States Department of Health and Human Services (DHHS), 2001. Mandatory Guidelines for Federal Workplace Drug Testing Programs and Notice of Proposed Revisions (Federal Register 2001; 66: 43876-43882).

World Anti-Doping Code

2.0 Code Provisions

The following articles in the *Code* directly address the *International Standard* for Laboratories:

***Code* Article 3.2 Methods of Establishing Facts and Presumptions**

3.2.1 *WADA*-accredited Laboratories are presumed to have conducted *Sample* analysis and custodial procedures in accordance with the *International Standard* for laboratory analysis. The *Athlete* may rebut this presumption by establishing that a departure from the *International Standard* occurred. If the *Athlete* rebuts the preceding presumption by showing that a departure from the *International Standard* occurred, then the *Anti-Doping Organization* shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding*.

***Code* Article 6 Analysis of Samples**

Doping Control Samples shall be analyzed in accordance with the following principles:

6.1 Use of Approved Laboratories *Doping Control Samples* shall be analyzed only in *WADA*-accredited laboratories or as otherwise approved by *WADA*. The choice of the *WADA*-accredited laboratory (or other method approved by *WADA*) used for the *Sample* analysis shall be determined exclusively by the *Anti-Doping Organization* responsible for results management. *[Comment: The phrase "or other method approved by WADA" is intended to cover, for example, mobile blood Testing procedures which WADA has reviewed and considers to be reliable.]*

6.2 Substances Subject to Detection. *Doping Control Samples* shall be analyzed to detect *Prohibited Substances and Prohibited Methods* identified on the *Prohibited List* and other substances as may be directed by *WADA* pursuant to Article 4.5 (Monitoring Program).

6.3 Research on *Samples*. No *Sample* may be used for any purpose other than the detection of substances (or classes of substances) or methods on the *Prohibited List,* or as otherwise identified by *WADA* pursuant to Article 4.5 (Monitoring Program), without the *Athlete's* written consent.

6.4 Standards for *Sample* Analysis and Reporting. Laboratories shall analyze *Doping Control Samples* and report results in conformity with the *International Standard* for Laboratories analysis.

***Code* Article 13.5 Appeals from Decisions Suspending or Revoking Laboratory Accreditation**

Decisions by *WADA* to suspend or revoke a Laboratory's *WADA* accreditation may be appealed only by that Laboratory with the appeal being exclusively to CAS.

***Code* Article 14.1 Information Concerning *Adverse Analytical Findings* and Other Potential Anti-Doping Rule Violations.** An *Athlete* whose *Sample* has resulted in an *Adverse Analytical Finding*, or an *Athlete* or other *Person* who may have violated an anti-doping rule, shall be notified by the *Anti-Doping Organization* with results management responsibility as provided in Article 7 (Results Management). The *Athlete*'s *National Anti-Doping Organization* and International Federation and *WADA* shall also be notified not later than the completion of the process described in Articles 7.1 and 7.2. Notification shall include: the *Athlete's* name, country, sport and discipline within the sport, whether the test was *In-Competition* or *Out-of-Competition*, the date of *Sample* collection and the analytical result reported by the laboratory. The same *Persons* and *Anti-Doping Organizations* shall be regularly updated on the status and findings of any review or proceedings conducted pursuant to Articles 7 (Results Management), 8 (Right to a Fair Hearing) or 13 (Appeals), and, in any case in which the period of *Ineligibility* is eliminated under Article 10.5.1 (*No Fault or Negligence*), or reduced under Article 10.5.2 (*No Significant Fault or Negligence*), shall be provided with a written reasoned decision explaining the basis for the elimination or reduction. The recipient organizations shall not disclose this information beyond those *Persons* within the organization with a need to know until the *Anti-Doping Organization* with

results management responsibility has made public disclosure or has failed to make public disclosure as required in Article 14.2.

3.0 Terms and definitions

3.1 Code defined Terms

Adverse Analytical Finding: A report from a Laboratory or other approved *Testing* entity that identifies in a *Specimen* the presence of a *Prohibited Substance* or its *Metabolites* or *Markers* (including elevated quantities of endogenous substances) or evidence of the *Use* of a *Prohibited Method*.

Anti-Doping Organization: A *Signatory* that is responsible for adopting rules for, initiating, implementing or enforcing any part of the *Doping Control* process. This includes, for example, the International Olympic Committee, the International Paralympic Committee, *Major Event Organizations* that conduct *Testing* at their *Events*, *WADA*, International Federations, and *National Anti-Doping Organizations.*

Athlete: For purposes of *Doping Control*, any *Person* who participates in sport at the international level (as defined by each International Federation) or national level (as defined by each *National Anti-Doping Organization*) and any additional *Person* who participates in sport at a lower level if designated by the *Person's National Anti-Doping Organization*. For purposes of anti-doping information and education, any *Person* who participates in sport under the authority of any *Signatory*, government, or other sports organization accepting the *Code*.

Code: The World Anti-Doping Code.

Doping Control: The process including test distribution planning, *Sample* collection and handling, Laboratory analysis, results management, hearings and appeals.

Event: A series of individual *Competitions* conducted together under one ruling body (e.g., the Olympic Games, FINA World Championships, or Pan American Games).

In-competition: For purposes of differentiating between *In-competition* and *Out-of-Competition Testing*, unless provided otherwise in the rules of an International Federation or other relevant *Anti-Doping Organization*, an *In-Competition* test is a test where an *Athlete* is drawn for *Testing* in connection with a specific *Competition*.

International Standard: A standard adopted by *WADA* in support of the *Code*. Compliance with an *International Standard* (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures covered by the *International Standard* were performed properly.

Marker: A compound, group of compounds or biological parameters that indicates the *Use* of a *Prohibited Substance* or *Prohibited Method.*

Metabolite: Any substance produced by a biotransformation process.

National Anti-Doping Organization: The entity(ies) designated by each country as possessing the primary authority and responsibility to adopt and implement anti-doping rules, direct the collection of *Samples*, the management of test results, and the conduct of hearings, all at the national level. If this designation has not been made by the competent public authority(ies), the entity shall be the country's *National Olympic Committee* or its designee.

National Olympic Committee: The organization recognized by the International Olympic Committee. The term *National Olympic Committee* shall also include the National Sport Confederation in those countries where the National Sport Confederation assumes typical *National Olympic Committee* responsibilities in the anti-doping area.

Out-of-Competition: Any *Doping Control* which is not *In-competition*.

Person: A natural person or an organization or other entity.

Prohibited List: The List identifying the *Prohibited Substances* and *Prohibited Methods*.

Prohibited Method: Any method so described on the *Prohibited List*.

Prohibited Substance: Any substance so described on the *Prohibited List*.

Publicly Disclose or Publicly Report: To disseminate or distribute information to the general public or *Persons* beyond those *Persons* entitled to earlier notification in accordance with Article 14.

Sample/Specimen: Any biological material collected for the purposes of *Doping Control*.

Signatories: Those entities signing the *Code* and agreeing to comply with the *Code*, including the International Olympic Committee, International Federations, International Paralympic Committee, *National Olympic Committees*, National Paralympic Committees, *Major Event Organizations*, *National Anti-Doping Organizations*, and *WADA*.

Testing: The parts of the *Doping Control* process involving test distribution planning, *Sample* collection, *Sample* handling, and *Sample* transport to the Laboratory.

Use: The application, ingestion, injection or consumption by any means whatsoever of any *Prohibited Substance* or *Prohibited Method*.

WADA: The World Anti-Doping Agency.

3.2 Defined Terms from the *International Standard* for Laboratories

Aliquot: A portion of the *Sample* of biological fluid or tissue (e.g., urine, blood, etc.) obtained from the *Athlete* used in the testing process.

Certified Reference Material: Reference Material, accompanied by a certificate, one or more whose property values are certified by a procedure which establishes its traceability to an accurate realization of the unit in which the property values are expressed, and for which each certified value is accompanied by an uncertainty at a stated level of confidence.

Confirmation Procedure: An analytical test procedure whose purpose is to identify the presence of a specific *Prohibited Substance* in a *Sample*. [*Comment: A Confirmation Procedure may also indicate a quantity of Prohibited Substance greater than a threshold value or quantify the amount of a Prohibited Substance in a Sample.*]

Flexible Accreditation: Approval for a Laboratory to make restricted modifications in the scope of the accreditation without the involvement of the national accreditation body before the modifications are implemented

Intermediate Precision, s_{Ri}: Variation in results observed when one or more factors, such as time, equipment, and operator are varied within a Laboratory with i denoting the number of factors varied.

Laboratory Internal Chain of Custody: Documentation of the sequence of *Persons* in possession of the *Sample* and any portions of the *Sample* taken for *Testing*. *[Comment: Laboratory Internal Chain of Custody is generally documented by a written record of the date, location, action taken, and the individual performing an action with a Sample or Aliquot.]*

Laboratory: An accredited laboratory applying test methods and processes to provide evidentiary data for the detection and, if applicable, quantification of a Threshold Substance on the *Prohibited List* in urine and other biological *Samples*.

Laboratory Documentation Packages: The material produced by the Laboratory to support the finding of an *Adverse Analytical Finding* as set forth in the *WADA* Technical Document for Laboratory Documentation Packages.

Minimum Required Performance Limit: A concentration of a *Prohibited Substance* or *Metabolite* of a *Prohibited Substance* or *Marker* of a *Prohibited Substance* or *Method* that a doping Laboratory is expected to reliably detect in the routine daily operation of the Laboratory. See Technical Document Minimum Required Performance Limits for Detection of *Prohibited Substances*.

Non-threshold Substance: A substance listed on the *Prohibited List* for which the documentable detection of any amount is considered an anti-doping rule violation.

Presumptive Analytical Finding: The status of a *Sample* test result for which there is an adverse screening test, but a confirmation test has not been performed.

Reference Collection: A collection of samples of known origin that may be used in the determination of the identity of an unknown substance. For example, a well characterized sample obtained from a verified administration study in which scientific documentation of the identity of *Metabolite(s)* can be demonstrated.

Reference Material: Material or substance one or more of whose properties are sufficiently homogeneous and well established to be used for the calibration of an apparatus, the assessment of a measurement method or for assigning values to materials.

Repeatability, s_r: Variability observed within a laboratory, over a short time, using a single operator, item of equipment, etc.

Reproducibility, s_R: Variability obtained when different laboratories analyze the same *Sample*.

Revocation: The permanent withdrawal of a Laboratory's *WADA* accreditation.

Screening Procedure: An analytical test procedure whose purpose is to identify those *Samples* which are suspicious with respect to containing a *Prohibited Substance* or *Metabolite* or *Marker* of a *Prohibited Method* and which require additional confirmation testing.

Split Sample: Division of a *Sample* taken for testing into two portions at collection, usually designated "A" and "B."

Suspension: The temporary withdrawal of a Laboratory's *WADA* accreditation.

Testing Authority: The International Olympic Committee, World Anti-Doping Agency, International Federation, National Sport Organization, *National Anti-Doping Organization*, *National Olympic Committee*, *Major Event Organization*, or other authority defined by the *Code* responsible for *Sample* collection and transport either *In-Competition* or *Out-of-Competition* and/or for management of the test result.

Threshold Substance: A substance listed in the *Prohibited List* for which the detection of an amount in excess of a stated threshold is considered an *Adverse Analytical Finding*.

PART TWO: LABORATORY ACCREDITATION REQUIREMENTS AND OPERATING STANDARDS

4.0 Requirements for WADA accreditation

4.1 Initial *WADA* accreditation

This section describes the specific requirements for the initial *WADA* accreditation of the laboratory. All the requirements must be fulfilled in order to obtain an initial *WADA* accreditation. For some of the requirements, the laboratory has to demonstrate compliance during the probationary period and for other requirements compliance will be checked and controlled based on an accreditation audit (ref. 5.1, 5.2 and 5.3).

4.1.1 ISO/IEC 17025

The laboratory shall be accredited by a relevant national accreditation body according to ISO/IEC 17025 with primary reference to the interpretations and applications of the ISO/IEC 17025 requirements as they are described in Application of ISO/IEC 17025 to the Analysis of *Doping Control Samples* (Section 5). The ISO/IEC 17025 accreditation must be obtained before the initial *WADA* accreditation will be given.

4.1.2 Letter of support

The laboratory shall provide an official letter of support from the relevant national public authority responsible for the national anti-doping program, if any, or a similar letter of support from the *National Olympic Committee* or *National Anti-Doping Organization*. The letter of support shall contain as a minimum:

- Guarantee of sufficient financial support annually for a minimum of 3 years
- Guarantee of sufficient numbers of *Samples* annually for 3 years
- Guarantee of provision of necessary analytical facilities and instrumentation, where applicable

In addition, any explanation of exceptional circumstances shall be given due consideration by *WADA*. The three year letter of support does not in any way require exclusive support for only one laboratory.

Letters of support from international sport organizations such as International Federations could also be provided in addition to the above mentioned letters.

If the laboratory as an organization is linked to host organizations, (e.g. universities, hospitals...) an official letter of support from the host organizations shall be provided which should include the following information:

- Documentation of the administrative support for the laboratory
- Financial support for the laboratory, if relevant

- Support for the research and development activities
- Guarantee of provision of necessary analytical facilities and instrumentation

4.1.3 Code of Ethics

The laboratory shall sign and comply with the provision in the Code of Ethics (Annex B) which are relevant for a laboratory in the probationary period.

4.1.4 Proficiency testing program

During the probationary period the laboratory shall successfully analyze at a minimum four sets of proficiency testing samples containing at a minimum five samples per set.

The final accreditation test shall assess both the scientific competence and the capability of the laboratory to manage multiple *Samples*.

4.1.5 Sharing of knowledge

The laboratory shall demonstrate during the probationary period its willingness and ability to share knowledge with other *WADA* Accredited Laboratories. A description of this sharing is provided in the Code of Ethics (Annex B).

4.1.6 Research

The laboratory shall demonstrate in its budget an allocation to research and development activities in the field of *Doping Control* of at least 7% of the annual budget for the initial 3-year period. The research activities can either be conducted by the laboratory or in cooperation with other *WADA*-accredited Laboratories or other research organizations.

4.1.7 Initial accreditation of Laboratories holding IOC accreditation

Laboratories accredited by the IOC in 2003 and which successfully complete the joint 2003 IOC/*WADA* re-accreditation test and at a minimum conduct an internal audit against Section 5 of the *Internal Standard* for Laboratories will receive *WADA* accreditation in 2004. The *International Standards* for Laboratories requirements will be fully in effect on January 1st, 2004. Laboratories that are downgraded or fail the 2003 IOC/*WADA* re-accreditation test will have their accreditation suspended or revoked by *WADA* in accordance with Section 6.4.8. Laboratories which have applied for, but have not received, IOC accreditation will complete their probationary period under the *International Standards* for Laboratories.

4.2 Maintaining *WADA* Accreditation

This section describes the specific requirements for a *WADA* re-accreditation of the Laboratory.

4.2.1 ISO/IEC 17025 accreditation

The Laboratory shall document a valid accreditation from the national accreditation body according to ISO/IEC 17025 with primary reference to the interpretations and applications of the ISO/IEC 17025 requirements as described in the Application of ISO/IEC 17025 to Analysis of *Doping Control Samples* (Section 5).

4.2.2 Flexible Accreditation

WADA accredited Laboratories may add or modify scientific methods or add analytes without the need for approval by the body that completed the ISO/IEC 17025 accreditation of that Laboratory. Any analytical method or procedure must be properly selected and validated and included in the scope of the Laboratory at the next ISO audit if the method is used for analysis of *Doping Control Samples*.

4.2.3 Letter of support

The Laboratory shall provide a renewed official letter of support from the relevant national public authority responsible for the national anti-doping program, if any, or a similar letter of support from the *National Olympic Committee* or *National Anti-Doping Organization* in years in which the Laboratory undergoes an ISO re-accreditation audit. The renewed letter of support shall contain as a minimum:

- Guarantee of sufficient financial support annually for a minimum of 3 years
- Guarantee of sufficient numbers of *Samples* annually
- Guarantee of provision of necessary analytical facilities and instrumentation, where applicable

Any explanation of exceptional circumstances shall be given due consideration by *WADA*. The letter of support does not in any way require exclusive support for only one Laboratory.

Letters of support from international sport organizations such as International Federations could also be provided in addition to the above mentioned letters.

If the Laboratory as an organization is linked to host organizations (e.g. university, hospital...), an official letter of support from the host organizations shall be renewed for each year in which the Laboratory undergoes a ISO re-accreditation audit and shall include the following information:

- Documentation of the administrative support for the Laboratory
- Financial support for the Laboratory, if relevant
- Guarantee of provision of necessary analytical facilities and instrumentation
- Support for the research activities

4.2.4 Minimum number of *testing Samples*

The Laboratory shall periodically provide, at the request of *WADA* a report documenting all test results reported in a format to be specified by *WADA*.

In order to maintain proficiency, *WADA*-accredited Laboratories are required to analyze a minimum of 1500 *Doping Control Samples* per year that are provided by a Testing Authority. If the Laboratory fails to analyze this number of *Samples*, accreditation will be suspended or revoked, dependent on the circumstances.

4.2.5 Proficiency testing program

The Laboratories are required to successfully participate in the *WADA* Proficiency Testing program. The program is described in more detail in Annex A.

4.2.6 Reporting

The Laboratory shall simultaneously report to *WADA* and the relevant International Federation all *Adverse Analytical Findings* that have been reported to a Testing Authority. All reporting shall be in accord with the confidentiality requirements of the *Code*.

4.2.7 Code of Ethics

The Laboratory shall provide documentation of compliance with the provisions of the Code of Ethics (Annex B) relevant for a *WADA* accredited Laboratory. The Laboratory Director shall send a letter of compliance to *WADA* every year.

4.2.8 Sharing of knowledge

The Laboratory shall demonstrate their willingness and ability to share knowledge with other *WADA* Accredited Laboratories. A description of this sharing is provided in the Code of Ethics (Annex B).

4.2.9 Research

The Laboratory shall maintain an updated 3-year plan for research and development in the field of *Doping Control*, including an annual budget in this area.

The Laboratory should document the publication of results of the research in relevant scientific papers in the peer-reviewed literature. These documents shall be made available to *WADA* upon request. The Laboratory may also demonstrate a research program by documenting successful or pending applications for research grants.

4.3 Special Requirements for Major *Events*

The Laboratory support for the Olympic Games and other major *Events* may be such that the accredited Laboratory facilities are not adequate. This may require re-location of the Laboratory to a new facility, the addition of personnel, or the acquisition of additional equipment. The Laboratory Director of the *WADA*-accredited Laboratory designated to perform the testing shall be responsible to ensure that the quality management system is maintained.

4.3.1 Satellite facility of an accredited Laboratory

If the Laboratory is required to move or extend its operation temporarily to a new physical location, the Laboratory must demonstrate a valid ISO/IEC 17025 accreditation with primary compliance with the Application of ISO/IEC 17025 to the Analysis of *Doping Control Samples* for the new facility ("satellite facility").

Any methods or equipment unique to the satellite facility must be validated prior to the satellite facility accreditation audit. Any changes to methods or other procedures in the quality manual must also be validated prior to the audit.

4.3.2 Personnel

The Laboratory shall report to *WADA* any senior personnel (e.g., certifying scientists, quality system management staff, supervisors, etc.) temporarily working in the Laboratory. The Laboratory Director shall ensure that these personnel are adequately trained in the methods, policies, and procedures of the Laboratory. Particular emphasis should be given to the Code of Ethics and the confidentiality of the results management process. Adequate documentation of training of these temporary employees should be maintained by the Laboratory.

4.3.3 Proficiency testing

WADA may, at its sole discretion, submit proficiency testing samples to the Laboratory for analysis. The samples shall be analyzed by the same methods used in the testing of *Samples* from a Testing Authority. These samples may be part of the ISO/IEC 17025 audit in conjunction with the national accrediting body. Failure(s) to successfully complete the proficiency test will be considered by *WADA* in deciding whether to accredit the Laboratory. In the event of an unacceptable report, the Laboratory shall document the changes instituted to remedy the failure.

The proficiency testing process should include any additional personnel that are added to the staff for the major *Event*. The samples should be analyzed using the protocols and procedures that will be used for analysis of *Samples* for the *Event*.

4.3.4 Reporting

The Laboratory shall document that the reporting of test results maintains confidentiality.

5.0 Application of ISO 17025 to the Analysis of Doping Control Samples

5.1 Introduction and Scope

This section of the document is intended as an application as described in Annex B.4 (Guidelines for establishing applications for specific fields) of ISO/IEC 17025 for the field of *Doping Control*. Any aspect of testing or management not specifically discussed in this document shall be governed by ISO/IEC 17025 and, where applicable, by ISO 9001. The application focuses on the specific parts of the processes that are critical with regard to the quality of the laboratory's performance as a *Doping Control* Laboratory. These processes have been determined to be critical to the defined ISO 17025 criteria and are therefore determined to be significant in the evaluation and accreditation process.

This section introduces the specific performance standards for a *Doping Control* Laboratory. The conduct of testing is considered a process within the definitions of ISO 9001. Performance standards are defined according to a process model where the *Doping Control* Laboratory practice is structured into three main categories of processes:

- Analytical and technical processes
- Management processes
- Support processes

Wherever possible, the application will follow the format of the ISO 17025 document. The concepts of the quality management system, continuous improvement, and customer satisfaction included in ISO 9001 have been included.

5.2 Analytical and Technical Processes

5.2.1 Receipt of *Samples*

5.2.1.1 *Samples* may be received by any method authorized by *the International Standard* for Testing.

5.2.1.2 The transport container shall first be inspected and any irregularities recorded.

5.2.1.3 The name and signature (or other means of identification and recording) of the *Person* delivering or transferring custody of the shipped *Samples*, the date, the time of receipt, and the name and signature of the Laboratory representative receiving the *Samples*, shall be documented as part of the Laboratory Internal Chain of Custody record.

5.2.2 Handling of *Samples*

5.2.2.1 The Laboratory shall have a system to uniquely identify the *Samples* and associate each *Sample* with the collection document or other external chain of custody.

5.2.2.2 The Laboratory shall have Laboratory Internal Chain of Custody procedures to maintain control of and accountability for *Samples* from receipt through final disposition of the *Samples*. The procedures must incorporate the concepts presented in the *WADA* Technical Document for Laboratory Internal Chain of Custody (Annex C).

5.2.2.3 The Laboratory shall observe and document conditions that exist at the time of receipt that may impact on the integrity of a *Sample* report. For example, irregularities noted by the Laboratory should include, but are not limited to:

- *Sample* tampering is evident.
- *Sample* is not sealed with tamper-resistant device or seal upon receipt.
- *Sample* is without a collection form (including *Sample* identification code) or a blank form is received with the *Sample*.

- *Sample* identification is unacceptable. For example, the number on the bottle does not match the *Sample* identification number on the form.
- *Sample* volume is extremely low

5.2.2.4 The Laboratory should notify and seek advice from the Testing Authority regarding rejection and testing of *Samples* for which irregularities are noted.

5.2.2.5 The Laboratory shall retain the A and B *Sample*(s) for a minimum of three (3) months after the Testing Authority receives a negative report. The *Samples* shall be retained frozen under appropriate conditions.

Samples with irregularities shall be held frozen for a minimum of three (3) months following the report to the Testing Authority.

5.2.2.6 The Laboratory shall retain the *Sample(s)* with an *Adverse Analytical Finding* for a minimum of three (3) months after the Testing Authority receives the final analytical (A or B *Sample*) report. The *Sample* shall be stored frozen under appropriate conditions during the long term storage.

5.2.2.7 If the Laboratory has been informed by the Testing Authority that the analysis of a *Sample* is challenged or disputed, the *Sample* shall be retained frozen under appropriate conditions and all the records pertaining to the *Testing* of that *Sample* shall be stored until completion of any challenges.

5.2.2.8 The Laboratory shall maintain a policy pertaining to retention, release, and disposal of *Samples* or Aliquots.

5.2.2.9 The Laboratory shall maintain custody information on the transfer of *Samples*, or portions thereof to another Laboratory.

5.2.3 Sampling and Preparation of Aliquots for Testing

5.2.3.1 The Laboratory shall maintain Laboratory Internal Chain of Custody procedures for control of and accountability for all Aliquots from preparation through disposal. The procedures must incorporate the concepts presented in the *WADA* Technical Document for Laboratory Internal Chain of Custody.

5.2.3.2 Before the initial opening of a *Sample* bottle, the device used to ensure integrity of the *Sample* (e.g., security tape or a bottle sealing system) shall be inspected and the integrity documented.

5.2.3.3 The Aliquot preparation procedure for any Screening Procedure or Confirmation Procedure shall ensure that no risk of contamination of the *Sample* or Aliquot exists.

5.2.4 Testing

5.2.4.1 Urine integrity testing

5.2.4.1.1 The Laboratory must have a written policy establishing the procedures and criteria for *Sample* integrity tests.

5.2.4.1.2 The Laboratory should note any unusual condition of the urine – for example: color, odor, or foam. Any unusual conditions should be recorded and included as part of the report to the Testing Authority.

5.2.4.1.3 The Laboratory shall test for the pH and specific gravity as urine integrity parameters on the "A" *Sample*. Other tests may be performed if requested by the Testing Authority and approved by *WADA*

5.2.4.2 Urine screen testing

5.2.4.2.1 The Screening Procedure(s) shall detect the *Prohibited Substance*(s) or *Metabolite(s)* of *Prohibited Substance*(s), or *Marker*(s) of the *Use* of a *Prohibited Substance* or *Method* for all substances listed in the *Out-of-Competition* or *In-competition* Section of the *Prohibited List as appropriate* for which there is a *WADA*-accepted screening method. *WADA* may make specific exceptions to this section.

5.2.4.2.2 The Screening Procedure shall be performed with a *WADA*-accepted validated method that is appropriate for the substance or method being tested. The criteria for accepting a screening result and allowing the testing of the *Sample* to proceed must be scientifically valid.

5.2.4.2.3 All screening assays shall include negative and positive controls in addition to the *Samples* being tested.

5.2.4.2.4 For analytes that must exceed a threshold for reporting as an *Adverse Analytical Finding*, appropriate controls shall be included in the screening assay. Screening Procedures for Threshold Substances are not required to meet quantitative or uncertainty requirements.

5.2.4.3 Urine confirmation testing

All Confirmation Procedures must be documented and meet applicable uncertainty requirements. The objective of a Confirmation Procedure is to ensure the identification and/or quantification and to exclude any technical deficiency in the Screening Procedure. Since the objective of the confirmation assay is to accumulate additional information regarding an adverse finding, a Confirmation Procedure should have greater selectivity/discrimination than a Screening Procedure.

5.2.4.3.1 "A" *Sample* Confirmation

5.2.4.3.1.1 Presumptive identification from a Screening Procedure of a *Prohibited Substance*, *Metabolite*(s) of a *Prohibited Substance*, or *Marker*(s) of the *Use* of a *Prohibited Substance* or *Method* must be confirmed using a second Aliquot(s) taken from the original "A" *Sample*.

5.2.4.3.1.2 Mass spectrometry coupled to either gas or liquid chromatography is the method of choice for confirmation of *Prohibited Substances*, *Metabolite*(s) of a *Prohibited Substance*, or *Marker*(s) of the *Use* of a *Prohibited Substance* or *Method*. GC/MS or HPLC/MS are acceptable for both Screening Procedures and Confirmation Procedures for a specific analyte.

5.2.4.3.1.3 Immunoassay for confirmation of prohibited proteins, peptides, mimetics, and analogues or *Marker*(s) of their *Use* is permitted. The immunoassay used for confirmation must use a procedure with a different antibody that should recognise a different epitope of the peptide/protein than the assay used for screening.

5.2.4.3.1.4 The Laboratory must have a policy to define those circumstances where the confirmation testing of an "A" *Sample* may be repeated (e.g., batch quality control failure). Each repeat confirmation must be documented and be completed on a new Aliquot of the "A" *Sample*.

5.2.4.3.1.5 The Laboratory is not required to confirm every *Prohibited Substance* that is identified by the Screening Procedures. The decision on the prioritization on order of confirmation(s) should be made in cooperation with the Testing Authority and the decision documented. In addition, no Certificate of Analysis or final written Test Report incorporating a Presumptive Analytical Finding shall be issued.

5.2.4.3.2 "B" *Sample* Confirmation

5.2.4.3.2.1 In those cases where confirmation of a *Prohibited Substance*, *Metabolite(s)* of a *Prohibited Substance*, or *Marker*(s) of the *Use* of a *Prohibited Substance* or *Method* is requested in the "B" *Sample*, the "B" *Sample* analysis should occur as soon as possible and should be completed within thirty (30) days of notification of an "A" *Sample Adverse Analytical Finding.*

5.2.4.3.2.2 The "B" *Sample* confirmation must be performed in the same Laboratory as the "A" *Sample* confirmation. A different

analyst must perform the "B" analytical procedure. The same individual(s) that performed the "A" analysis may perform instrumental set up and performance checks and verify results.

5.2.4.3.2.3 The B *Sample* result must confirm the A *Sample* identification for the *Adverse Analytical Finding* to be valid. The mean value for the B *Sample* finding for Threshold Substances is required to exceed that threshold including consideration of uncertainty.

5.2.4.3.2.4 The *Athlete and/or a* representative, a representative of the entity responsible for *Sample* collection or results management, a representative of the *National Olympic Committee*, National Sport Federation, International Federation, and a translator shall be authorized to attend the "B" confirmation.

In the absence of all of the above persons, the Testing Authority or the Laboratory shall appoint a surrogate (independent witness) to verify that the "B" *Sample* container shows no signs of tampering and that the identifying numbers match that on the collection documentation.

The Laboratory Director may limit the number of individuals in Controlled Zones of the Laboratory based on safety or security considerations.

The Laboratory Director may remove, or have removed by proper authority, any *Athlete* or representative that is interfering in the testing process. Any behavior resulting in removal should be reported to the Testing Authority and may be considered anti-*doping rule violation in accordance with Article 2.5 of the Code*, "*Tampering*, or *Attempting* to tamper, with any part of *Doping Control*".

5.2.4.3.2.5 Aliquots taken for analysis must be taken from the original "B" *Sample*.

5.2.4.3.2.6 The Laboratory must have a policy to define those circumstances when confirmation testing of the "B" *Sample* may be repeated. Each repeat confirmation should be performed on a new Aliquot of the "B" *Sample*.

5.2.4.3.2.7 If the "B" *Sample* confirmation does not provide analytical findings that confirm the "A" *Sample* result, the *Sample* shall be considered negative and the Testing Authority notified of the new analytical finding.

5.2.4.4 Alternative biological matrices screening and confirmatory testing

5.2.4.4.1 Unless otherwise defined, this application applies only to the analysis of urine *Samples*. Blood, plasma, and serum are acceptable matrices for testing in certain circumstances. Specific requirements for the testing of these matrices are not included in the scope of this document and will be promulgated separately.

5.2.4.4.2 Any testing results of hair, nails, oral fluid or other biological material shall not be used to counter *Adverse Analytical Findings* from urine.

5.2.5 Results Management

5.2.5.1 Review of results

5.2.5.1.1 A minimum of two certifying scientists must independently review all *Adverse Analytical Findings* before a report is issued. The review process shall be documented.

5.2.5.1.2 At a minimum, the review shall include:

- Laboratory Internal Chain of Custody documentation
- Urine integrity data
- Validity of the analytical screening and confirmation data and calculations
- Quality control data
- Completeness of documentation supporting the reported analytical findings

5.2.5.1.3 When an *Adverse Analytical Finding* is rejected, the reason(s) must be documented.

5.2.6 Documentation and Reporting

5.2.6.1 The Laboratory must have documented procedures to ensure that it maintains a coordinated record related to each *Sample* analyzed. In the case of an *Adverse Analytical Finding*, the record must include the data necessary to support the conclusions reported (as set forth in the Technical Document, Laboratory Documentation Packages) In general, the record should be such that in the absence of the analyst, another competent analyst could evaluate what tests had been performed and interpret the data.

5.2.6.2 Each step of testing shall be traceable to the staff member who performed that step.

5.2.6.3 Significant variance from the written procedure shall be documented as part of the record (e.g., memorandum for the record).

5.2.6.4 Where instrumental analyses are conducted, the operating parameters for each run shall be recorded.

5.2.6.5 Reporting of "A" *Sample* results should occur within ten (10) working days of receipt of the *Sample*. The reporting time required for specific competitions may be substantially less than ten days. The reporting time may be modified by agreement between the Laboratory and the Testing Authority.

5.2.6.6 The Laboratory Certificate of Analysis or Test Report shall include, in addition to the items stipulated in ISO 17025, the following:

- *Sample* identification number
- Laboratory identification number (if any)
- Status of test (*Out of competition/In-competition*)
- Name of competition and/or sport
- Date of receipt of *Sample*
- Date of report
- Type of sample (urine, blood, etc.)
- Test results
- Signature of certifying individual
- Other information as specified by the Testing Authority.

5.2.6.7 The Laboratory is not required to measure or report a concentration for *Prohibited Substances* for a non-threshold analyte. The Laboratory should report the actual *Prohibited Substance*(s), *Metabolite*(s) of the *Prohibited Substance*(s) or *Method*(s), or *Marker*(s) detected in the *Sample*.

5.2.6.8 For Threshold Substances, the Laboratory report should establish that the *Prohibited Substance* or its *Metabolite(s)* or *Marker(s)* of a *Prohibited Method* is present at a concentration greater than the threshold concentration taking into consideration the uncertainty in concluding that the concentration in the *Sample* exceeds the threshold. The estimate of uncertainty should not be included on the Certificate of Analysis or Test Report but must be included in Laboratory Documentation Packages.

5.2.6.9 The Laboratory shall have a policy regarding the provision of opinions and interpretation of data. An opinion or interpretation may be included in the Certificate of Analysis or Test Report provided that the opinion or interpretation is clearly identified as such. The basis upon which the opinion has been made shall be documented.

Note: An opinion or interpretation may include, but not be limited to, recommendations on how to use results, information related to the pharmacology, metabolism and pharmacokinetics of a substance, and whether an observed result is consistent with a set of reported conditions.

5.2.6.10 In addition to reporting to the Testing Authority, the Laboratory shall simultaneously report any *Adverse Analytical Findings* to *WADA* and the responsible International Federation. In the case where the sport or *Event* is not associated with an International Federation (e.g., college sports) or the *Athletes* are not members of an International Federation, the Laboratory is required to report *Adverse Analytical Findings* only to *WADA*. All reporting shall be in accord with the confidentiality requirements of the *Code*.

5.2.6.11 The Laboratory shall report quarterly to *WADA*, in a format specified by *WADA* , a summary of the results of all tests performed. No information that could link an *Athlete* with an individual result will be included. The report will include a summary of any *Samples* rejected for testing and the reason for the rejection.

When the clearinghouse is in place, the Laboratory shall simultaneously report to *WADA* all information reported to the Testing Authority, according to the requirements listed in Section 5.2.6.6, in lieu of the paragraph above. The information will be used to generate summary reports.

5.2.6.12 Laboratory Documentation Packages shall contain material specified in the *WADA* Technical Document on Laboratory Documentation Packages.

5.2.6.13 *Athlete* confidentiality is a key concern for all Laboratories engaged in *Doping Control* cases. Confidentiality requires extra safeguards given the sensitive nature of these tests.

5.2.6.13.1 Testing Authority requests for information must be made in writing to the Laboratories.

5.2.6.13.2 *Adverse Analytical Findings* shall not be provided by telephone.

5.2.6.13.3 Information sent by a facsimile is acceptable if the security of the receiving facsimile machine has been verified and procedures are in place to ensure that the facsimile has been transmitted to the correct facsimile number.

5.2.6.13.4 Unencrypted email is not authorized for any reporting or discussion of *Adverse Analytical Findings* if the *Athlete* can be identified or if any information regarding the identity of the *Athlete* is included. The Laboratory shall also provide any information requested by *WADA* in conjunction with the Monitoring Program, as set forth in Article 4.5 of the *Code.*

5.3 Quality Management Processes

5.3.1 Organization

5.3.1.1 Within the framework of ISO/IEC 17025, the Laboratory shall be considered a testing laboratory (and not a calibration laboratory).

5.3.1.2 The Laboratory (Scientific) Director shall have the responsibilities of the Chief Executive, unless otherwise noted.

5.3.2 Quality Policy and Objectives

5.3.2.1 The Quality Policy and implementation shall meet the requirements of ISO/IEC 17025 Section 4.2 Quality Management System and shall include a quality manual that describes the quality system.

5.3.2.2 A single staff member should be appointed as the Quality Manager and should have responsibility and authority to implement and ensure compliance with the quality system.

5.3.3 Document Control

The control of documents that make up the Quality Management System shall meet the requirements of ISO/IEC 17025 Section 4.3 Document Control

5.3.3.1 The Laboratory Director (or designee) shall approve the Quality Manual and all other documents used by staff members in completing testing.

5.3.3.2 The Quality Management System shall ensure that the contents of *WADA* Technical Documents are incorporated into the appropriate manuals by the effective date and that training is provided and documented. If this is not possible, *WADA* should be contacted with a written request for an extension.

5.3.4 Review of requests, tenders, and contracts

Review of legal documents or agreements related to testing must meet the requirements of ISO/IEC 17025 Section 4.4.

The Laboratory shall ensure that the Testing Authority is informed concerning the tests that can be performed on *Samples* submitted for analysis.

5.3.5 Subcontracting of tests

A *WADA*-accredited Laboratory must perform all work with its own personnel and equipment within its accredited facility. In the case of specific technologies that may not be available in the Laboratory (e.g., GC/C/IRMS, Isoelectric focusing [EPO/NESP]), a *Sample* may be transferred to another *WADA*-accredited Laboratory in which the technology is within the scope of analysis.

In exceptional circumstances, *WADA* may elect to grant specific authorization for subcontracting part of the tasks. In such cases, assurance of maintaining the level of quality and the appropriate chain of custody throughout the entire process is the responsibility of the Laboratory Director of the *WADA*-accredited Laboratory.

5.3.6 Purchasing of services and supplies

5.3.6.1 Chemicals and reagents
Chemicals and reagents must be suitable for the purpose and be of established purity. Reference purity documentation must be obtained when available and retained in the quality system documents.

In the case of rare or difficult to obtain reagents, Reference Materials, or Reference Collections, particularly for use in qualitative methods, the expiration date of the solution can be extended if adequate documentation exists that no significant deterioration has occurred.

5.3.6.2 Waste disposal shall be in accord with national laws and other relevant regulations. This includes biohazard materials, chemicals, controlled substances, and radioisotopes, if used.

5.3.6.3 Environmental health and safety policies should be in place to protect the staff, the public, and the environment.

5.3.7 Service to the client

5.3.7.1 Service to clients shall be handled in accord with ISO/IEC 17025 Section 4.7.

5.3.7.2 Ensuring responsiveness to *WADA*
The Laboratory Director or his designee must:

- Ensure adequate communication.
- Report to *WADA* any unusual circumstances or information with regard to testing programs, patterns of irregularities in *Specimens*, or potential *Use* of new substances.
- Provide complete and timely explanatory information to *WADA* as appropriate and as requested to provide quality accreditation.

5.3.7.3 Ensuring Testing Authority focus

5.3.7.3.1 The Laboratory Director shall be familiar with the Testing Authority rules and the *Prohibited List.*

5.3.7.3.2 The Laboratory Director should interact with the Testing Authority with respect to specific timing, report information, or other support needs. These interactions should include, but are not limited to, the following:

- Communicate with the Testing Authority concerning any significant question of testing needs or any unusual circumstance in the testing process (including delays in reporting).
- Act without bias regarding the national affiliation of the Testing Authority.
- Provide complete and timely explanations to the Testing Authority when requested or when there is a potential for misunderstanding the Test Report or Certificate of Analysis.
- Provide evidence and/or expert testimony on any test result or report produced by the Laboratory as required in administrative, arbitration, or legal proceedings.
- Respond to any comment or complaint submitted by a Testing Authority or *Anti-Doping Organization* concerning the Laboratory and its operation.

5.3.7.3.3 The Laboratory shall monitor Testing Authority satisfaction. There should be documentation that the Testing Authority concerns have been incorporated into the Laboratory Quality Management System, where appropriate.

5.3.7.3.4 The Laboratory shall develop a system, as required by ISO 17025, for monitoring key indicators of Laboratory service.

5.3.8 Complaints

Complaints shall be handled in accord with ISO/IEC 17025 Section 4.8.

5.3.9 Control of nonconforming testing work

5.3.9.1 The Laboratory shall have policies and procedures that shall be implemented when any aspect of its testing or a result from its testing does not comply to set procedures.

5.3.9.2 Documentation of any non-compliance or deviation from procedure or protocol involving a *Sample* testing shall be kept as part of the permanent record of that *Sample*.

5.3.10 Corrective action

Corrective action shall be taken in accord with ISO/IEC 17025 Section 4.10.

5.3.11 Preventive action

Preventive action shall be taken in accord with ISO/IEC 17025 Section 4.11.

5.3.12 Control of records

5.3.12.1 Technical Records

5.3.12.1.1 Analytical records on negative *Samples*, including Laboratory Internal Chain of Custody documentation and medical information (T/E ratio, steroid profiles, and blood parameters), must be

retained in secure storage for at least two (2) years. Relevant records on *Samples* with irregularities or rejected *Samples* must be retained in secure storage for at least two (2) years.

5.3.12.1.2 All analytical records on *Specimens* with an *Adverse Analytical Finding* must be retained in secure storage at least five (5) years, unless otherwise specified by the Testing Authority or by contract.

5.3.12.1.3 The raw data supporting all analytical results must be retained in secure storage for five (5) years.

5.3.13 Internal Audits

5.3.13.1 Internal audits shall be completed in accordance with the requirements of ISO/IEC 17025 Section 4.13.

5.3.13.2 Internal Audit responsibilities may be shared amongst personnel provided that any *Person* does not audit his/her own area.

5.3.14 Management Reviews

5.3.14.1 Management reviews will be conducted to meet the requirements of ISO/IEC 17025 Section 4.14.

5.3.14.2 *WADA* will publish, from time to time, specific technical recommendations in a Technical Document. Implementation of the technical recommendations described in the Technical Documents is mandatory and should occur by the effective date.

Technical Documents supersede any previous publication on a similar topic, or if applicable, this document. The document in effect will be that Technical Document whose effective date most recently precedes that of *Sample* receipt date. The current version of the Technical Document will be available on *WADA*'s website.

5.4 Support processes

5.4.1 General

General support shall be provided in accord with ISO/IEC 17025.

5.4.2 Personnel

5.4.2.1 Every person employed by, or under contract to, the Laboratory must have a personnel file accessible for auditors. The file must contain copies of the resumé, or qualification form, a description of the job, and documentation of initial and ongoing training. The Laboratory must maintain appropriate confidentiality of personal information.

5.4.2.2 All personnel should have a thorough knowledge of their responsibilities including the security of the Laboratory, confidentiality of results, Laboratory Internal Chain of Custody protocols, and the standard operating procedures for any method that they perform.

5.4.2.3 The Laboratory Director is responsible for ensuring that Laboratory personnel are adequately trained and have experience necessary to perform their duties. The certification should be documented in the individual's personnel file.

5.4.2.4 The *Doping Control* Laboratory must have a qualified person as the Laboratory Director to assume professional, organizational, educational, and administrative responsibility. The Laboratory Director qualifications are:

- Ph.D. or equivalent in one of the natural sciences or Training comparable to a Ph.D. in one of the natural sciences such as a medical or scientific degree with appropriate experience or training.
- Experience with the analysis of biological material for substances used in doping.
- Appropriate training or experience in forensic applications of *Doping Control*.

5.4.2.5 The *Doping Control* Laboratory must have qualified personnel to serve as Certifying Scientist(s) to review all pertinent data, quality control results, and to attest to the validity of the Laboratory's test reports. The qualifications are:

- Bachelors Degree in Medical Technology, Chemistry, Biology, or related natural science or equivalent. Documented experience of 8 years or more in a *Doping Control* Laboratory is equivalent to a Bachelor's degree for this position.
- Experience in the analysis of doping materials in biological fluids.
- Experience in the use of relevant analytical techniques such as chromatography, immunoassay, and Gas Chromatography/Mass Spectrometry.

5.4.2.6 Supervisory personnel should have a thorough understanding of the Quality Control procedures; the review, interpretation, and reporting of test results; maintenance of Laboratory Internal Chain of Custody; and proper remedial action to be taken in response to analytical problems. The qualifications for supervisor are:

- Bachelors Degree in Medical Technology, Chemistry, Biology, or related natural science or equivalent. Documented experience of 5 years or more in a *Doping Control* Laboratory is equivalent to a Bachelor's degree for this position.

- Experience in relevant analytical testing including the analysis of *Prohibited Substances* in biological material.
- Experience in the use of analytical techniques such as chromatography, immunoassay, and Gas Chromatography/Mass Spectrometry.
- Ability to ensure compliance with quality management systems and quality assurance processes.

5.4.3 Accommodation and environmental conditions

5.4.3.1 Environmental Control

5.4.3.1.1 Maintain appropriate electrical services

5.4.3.1.1.1 The Laboratory shall ensure that adequate electrical service is available so that there is no interruption or compromise of stored data.

5.4.3.1.1.2 All computers, peripherals, and communication devices should be supported in such a way that service is not likely to be interrupted.

5.4.3.1.1.3 The Laboratory shall have policies in place to ensure the integrity of refrigerated and/or frozen stored samples in the event of an electrical failure.

5.4.3.1.2 The Laboratory shall have a written safety policy and compliance with Laboratory safety policies shall be enforced.

5.4.3.1.3 The storage and handling of controlled substances must comply with applicable national legislation.

5.4.3.2 Security of the facility

5.4.3.2.1 The Laboratory shall have a policy for the security of its facilities, which may include a threat and risk assessment.

5.4.3.2.2 Three levels of access should be considered in the quality manual or threat assessment plan:

- Reception zone. An initial point of control beyond which unauthorized individuals must be escorted.
- Common operational zones.
- Controlled zones. Access to these areas should be monitored and records maintained of access by visitors.

5.4.3.2.3 The Laboratory shall restrict access to Controlled Zones to only authorized persons. A staff member should be assigned as the

security officer who has overall knowledge and control of the security system.

5.4.3.2.4 Unauthorized persons must be escorted within Controlled Zones. A temporary authorization may be issued to individuals requiring access to the Controlled Zones such as auditing teams and individuals performing service or repair.

5.4.3.2.5 It is advisable to have a separate Controlled Zone for *Sample* receipt and Aliquot preparation.

5.4.4 Test Methods and Method Validation

5.4.4.1 Selection of Methods
Standard methods are generally not available for *Doping Control* analyses. The Laboratory shall develop, validate, and document in-house methods for compounds present on the *Prohibited List* and for related substances. The methods shall be selected and validated so they are fit for the purpose.

5.4.4.1.1 Non-threshold Substances
Laboratories are not required to measure or report a concentration for Non-threshold Substances.

The Laboratory must develop as part of the method validation process acceptable standards for identification of *Prohibited Substances*. (See the Technical Document on Identification Criteria for Qualitative Assays)

The Laboratory must demonstrate the ability to achieve the Minimum Required Performance Limits using a representative substance or substances if the appropriate standards are available. In case a Reference Collection is used for identification, an estimate of the limit of detection for the method must be provided by assessing a representative substance.

5.4.4.1.2 Threshold Substances
The Laboratory must develop methods with an acceptable uncertainty near the threshold concentration. The method must be capable of documenting both the relative concentration and the identity of the *Prohibited Substance* or *Metabolite(s)* or *Marker(s)*.

Confirmation methods for Threshold Substances must be performed on three Aliquots from the "A" bottle and three Aliquots from the "B" bottle, if the "B" sample confirmation is performed. If insufficient Sample volume exists to analyze three Aliquots, the maximum number of Aliquots that can be prepared should be analyzed. *Adverse Analytical Finding* decisions shall be based on the mean of the measured

concentrations and include consideration of uncertainty with the coverage factor, k, reflecting the number of Aliquots analyzed and a level of confidence of 95%. Reports and documentation, where necessary, shall report the mean concentration.

5.4.4.1.3 Minimum Required Performance Limit
For both Non-threshold and Threshold Substances, the Laboratory will be required to meet a Minimum Required Performance Limit for detection, identification, and demonstration that a substance exceeds the threshold (if required).

5.4.4.2 Validation of Methods

5.4.4.2.1 Confirmation methods for Non-threshold Substances must be validated. Examples of factors relevant to determining if the method is fit for the purpose are:

- Specificity. The ability of the assay to detect only the substance of interest must be determined and documented. The assay must be able to discriminate between compounds of closely related structures.
- Identification capability. Since the results for Non-threshold substances are not quantitative, the Laboratory should establish criteria for ensuring that identification of a substance representative of the class of *Prohibited Substances* can be repeatedly identified and detected as present in the sample at a concentration near the MRPL.
- Robustness. The method must be determined to produce the same results with respect to minor variations in analytical conditions. Those conditions that are critical to reproducible results must be controlled.
- Carryover. The conditions required to eliminate carryover of the substance of interest from sample to sample during processing or instrumental analysis must be determined and implemented.
- Matrix interferences. The method should avoid interference in the detection of *Prohibited Substances* or their *Metabolites* or *Markers* by components of the sample matrix.
- Standards. Reference standards should be used for identification, if available. If there is no reference standard

available, the use of data or sample from a validated Reference Collection is acceptable.

5.4.4.2.2 Confirmation methods for Threshold Substances must be validated. Examples of factors relevant to determining if the method is fit for the purpose are:

- Specificity. The ability of the assay to detect only the substance of interest must be determined and documented. The assay must be able to discriminate between compounds of closely related structures.

- Intermediate Precision. The method must allow for the reliable repetition of the results at different times and with different operators performing the assay. Intermediate Precision at the threshold must be documented.

- Robustness. The method must be determined to produce the same results with respect to minor variations in analytical conditions. Those conditions that are critical to reproducible results must be controlled.

- Carryover. The conditions required to eliminate carryover of the substance of interest from sample to sample during processing or instrumental analysis must be determined and implemented

- Matrix interferences. The method must limit interference in the measurement of the amount of *Prohibited Substances* or their *Metabolites* or *Markers* by components of the sample matrix.

- Standards. Reference standards should be used for quantification, if available. If there is no reference standard available, the use of data or sample from a validated Reference Collection is acceptable.

- Minimum Required Performance Limits (*MRPL*). The Laboratory must demonstrate that it can detect representative compounds of each prohibited class at defined MRPLs. The Laboratory should also determine the limit of detection and limit of quantification if the MRPL is close to these limits.

- Linearity must be documented at 50% to 200% of the threshold value, unless otherwise stipulated in a Technical Document.

5.4.4.3 Estimate of Uncertainty of Method

In most cases an identification of a *Prohibited Substance*, its *Metabolite(s)* or *Marker(s)*, is sufficient to report an *Adverse Analytical Finding*. Thus, quantitative uncertainty as defined in ISO/IEC 17025 does not apply. In the identification of a compound by GC/MS or HPLC/MS, there are qualitative measures that substantially decrease the uncertainty of identification.

In the case of a Threshold Substance, uncertainty in both the identification and the finding that the substance is present in an amount greater than the threshold concentration must be addressed.

5.4.4.3.1 Uncertainty in identification

The appropriate analytical characteristics must be documented for a particular assay. The Laboratory must establish criteria for identification of a compound at least as strict as those stated in any relevant Technical Document.

5.4.4.3.2 Uncertainty in establishing that a substance exceeds a threshold.

The purpose of threshold reporting in *Doping Control* is to establish that the *Prohibited Substance* or its *Metabolite*(s) or *Marker*(s) are present at a concentration greater than the threshold value. The method, including selection of standards and controls, and report of uncertainty should be designed to fit the purpose.

5.4.4.3.2.1 Uncertainty of quantitative results, particularly at the threshold value, should be addressed during the validation of the assay through measurement of Repeatability, Intermediate Precision and bias, where possible.

5.4.4.3.2.2 The expression of uncertainty should use the expanded uncertainty using a coverage factor, k, to reflect a level of confidence of 95 %. The expression of uncertainty may also take the form of a one-sided t-test at a level of confidence of 95 %.

5.4.4.3.2.3 Uncertainty may be further addressed in Technical Documents in order to reflect the purpose of analysis for the specific substances.

5.4.4.4 Control of Data

5.4.4.4.1 Data and Computer Security

5.4.4.4.1.1 Access to computer terminals, computers, or other operating equipment shall be controlled by physical access and by multiple levels of access controlled by

passwords or other means of employee recognition and identification. These include, but are not limited to account privileges, user identification codes, disk access, and file access control.

5.4.4.4.1.2 The operating software and all files shall be backed up on a regular basis and a current copy kept off site at a secure location.

5.4.4.4.1.3 The software shall prevent the changing of results unless there is a system to document the person doing the editing and that editing can be limited to users with proper level of access.

5.4.4.4.1.4 All data entry, recording of reporting processes and all changes to reported data shall be recorded with an audit trail. This shall include the date and time, the information that was changed, and the individual performing the task.

5.4.5 Equipment

5.4.5.1 A List of available equipment is to be established and maintained.

5.4.5.2 As part of a quality system, the Laboratories shall operate a program for the maintenance and calibration of equipment according to ISO 17025 Section 5.5.

5.4.5.3 General service equipment that is not used for making measurements should be maintained by visual examination, safety checks, and cleaning as necessary. Calibrations are only required where the setting can significantly change the test result. A maintenance schedule shall be established for items such as fume hoods, centrifuges, evaporators, etc, which are used in the test method.

5.4.5.4 Equipment or volumetric devices used in measuring shall have periodic performance checks along with servicing, cleaning, and repair.

5.4.5.5 Qualified subcontracted vendors may be used to service, maintain, and repair measuring equipment.

5.4.5.6 All maintenance, service, and repair of equipment must be documented.

5.4.6 Measurement Traceability

5.4.6.1 Reference Standards
Few of the available reference drug and drug *Metabolite*(s) are traceable to national or international standards. When available, reference drug or drug *Metabolite*(s) traceable to a national standard or certified by a body of recognized status, such as USP, BP, Ph.Eur. or WHO, should be used. When available, a certificate of analysis or authenticity shall be obtained.

When a reference standard is not certified, the Laboratory shall verify its identity and purity by comparison with published data or by chemical characterization.

5.4.6.2 Reference Collections
A collection of samples or isolates may be obtained from a biological matrix following an authentic and verifiable administration of a *Prohibited Substance* or *Method*, providing that the analytical data are sufficient to justify the identity of the relevant chromatographic peak or isolate as a *Prohibited Substance* or *Metabolite* of a *Prohibited Substance* or *Marker* of a *Prohibited Substance* or Method

5.4.7 Assuring the quality of test results

5.4.7.1 The Laboratory must participate in the *WADA* Proficiency Testing Program.

5.4.7.2 The Laboratory shall have in place a quality assurance system, including the submission of blind quality control samples, that challenges the entire scope of the testing process (i.e, sample receipt and accessioning through result reporting).

5.4.7.3 Analytical performance should be monitored by operating quality control schemes appropriate to the type and frequency of testing performed by the Laboratory. The range of quality control activities includes:

- Positive and negative controls analyzed in the same analytical run as the Presumptive *Adverse Analytical Finding Sample*.
- The use of deuterated or other internal standards or standard addition.
- Comparison of mass spectra or ion ratios from selected ion monitoring (SIM) to a Reference Material or Reference Collection sample analyzed in the same analytical run
- Confirmation of the "A" and "B" Split Samples.

- Quality control charts using appropriate control limits (e.g., ± 20% of the target value) depending on the analytical method employed.
- The quality control procedures should be documented in the Laboratory.

6.0 Process of *WADA* Accreditation

This section describes the technical and financial requirements the laboratory must fulfill in the process of being accredited by *WADA*. The description of the steps in the accreditation process is linked to the defined requirement presented in Section 4.

6.1 Applying for a *WADA* Laboratory Accreditation

6.1.1 Submit Application Form

The laboratory must fill in the necessary information in the Application Form as provided by *WADA* and deliver this to *WADA* with the required documentation and applicable fee. The Application shall be signed by the Laboratory Director and, if relevant, by the Director of the host organization.

6.1.2 Description of Laboratory

As preparations for an initial visit by *WADA*, the laboratory shall complete a questionnaire provided by *WADA* and submit it to *WADA* no later than four weeks after the receipt of the questionnaire. The following information shall be submitted through the questionnaire:

- List of staff and their qualifications
- Description of physical facilities, including a description of the security considerations for *Samples* and records
- List of proposed and actual instrumental resources and equipment
- List of available Reference Materials or standards, or plans to acquire Reference Materials or standards, including properly validated biological *Sample* Reference Collections
- Financial or business plan for the laboratory

WADA may require an update of this documentation during the process of accreditation.

6.1.3 Provide a letter of support

According to 4.1.2 the laboratory shall provide necessary letters of support containing the required information from the relevant national public authorities, or *National Olympic Committee*, or *National Anti-Doping Organization.*

6.1.4 Conduct Initial visit

If necessary, *WADA* shall conduct an initial visit (2-3 days) to the laboratory at the laboratory's expense. The purpose of this visit is to clarify issues with regard to the accreditation process and the defined requirements in *the International Standard* for

Laboratories and to obtain information about different aspects of the laboratory relevant for the accreditation.

6.1.5 Issue final report and recommendation

Within eight (8) weeks after the initial visit or the receipt of the questionnaire, *WADA* will complete and submit a report to the laboratory. In the report *WADA* will make the necessary recommendations concerning giving the laboratory status as a *WADA* Probationary laboratory or if this is not the case, identifying needed improvements in order to be a *WADA* Probationary laboratory.

6.2 Preparing for *WADA* Laboratory Accreditation

A probationary period shall be defined for a *WADA* Probationary Laboratory. The period will range from 12 to 24 months depending on the status of the laboratory with regard to the defined requirements (refer to Section 4.1). The main purpose of this period is that the laboratory shall prepare for initial accreditation. During this period, *WADA* will provide appropriate feedback to assist the laboratory in improving the quality of its testing process. In this period the laboratory shall:

6.2.1 Obtain ISO 17025 accreditation

The laboratory shall prepare and establish the required documentation and system according to the requirements in Application of ISO 17025 to Analysis of *Doping Control Sample* (Section 5) and the ISO 17025. Based on this, the laboratory shall initiate and prepare for the accreditation process by consulting with a relevant national accreditation body. An audit team consisting of representatives from a national accreditation body, including independent technical assessors recommended by *WADA* will audit the laboratory. Copies of the Audit Report shall be sent to *WADA*. The laboratory has to correct any identified non-conformities within defined time-frames and document this accordingly. Copies of the documentation of the correction of the non-conformities should be sent to *WADA*.

6.2.2 Participate in the *WADA* Proficiency Testing Program

The laboratory must complete a minimum of one year of successful participation in the *WADA* Proficiency Testing program prior to achieving initial accreditation. (See Annex A for description of the Proficiency Testing program.)

As a final proficiency test, the laboratory shall analyze 20-50 urine *Samples* in the presence of a *WADA* representative. Costs associated with the *WADA* on-site visit shall be at the laboratory's expense. The laboratory shall successfully identify and/or document a concentration in excess of the threshold of all of *the Prohibited Substances*, *Metabolite*(s) of *Prohibited Substances*, or *Marker*(s) of *Prohibited Substances* or Methods within five (5) days of the laboratory opening the *Samples*. The laboratory shall provide a Certificate of Analysis for each of the *Samples* in the proficiency test. For negative *Samples*, *WADA* may request all or a portion of the negative screening data. For each of the *Samples* for which there is an *Adverse Analytical Finding*, the laboratory shall provide a Laboratory Documentation Package. This data shall be submitted within two (2) weeks of submission of the initial report.

6.2.3 Implement Code of Ethics

The laboratory shall communicate the Code of Ethics (Annex B) to all employees and ensure understanding of and commitment to the different aspects of the Code of Ethics.

6.2.4 Plan and implement research activities

The laboratory shall develop a plan for its research and development activities in the field of *Doping Control* within a 3 year period including a budget. At least two research and development activities shall be initiated and implemented within the probationary period.

6.2.5 Plan and implement sharing of knowledge

The laboratory shall prepare and convey information and knowledge on at least two specific issues to the other *WADA* accredited Laboratories within the probationary period.

6.3 Obtaining *WADA* Accreditation

6.3.1 Participate in a *WADA* accreditation audit

In the last phase of the probationary period *WADA* will prepare in cooperation with the laboratory a final *WADA* accreditation audit. Representatives of *WADA* will audit compliance of the defined requirements in the Application of ISO 17025 to Analysis of *Doping Control Samples* (Section 5) and the practice and documentation of the laboratory. If *WADA* has participated in the initial ISO audit, the final *WADA* audit may be a document audit. Otherwise, the audit can be conducted together with the national accreditation body or separately if more practical. Should an on-site audit take place by *WADA*, the associated cost shall be at the laboratory's expense. Based on the audit, *WADA* will issue an Audit Report and submit this to the laboratory. If needed, the laboratory will have to correct identified non-compliances within defined time-frames and report these to *WADA*.

6.3.2 *WADA* report and recommendation

Based on the relevant documentation from the laboratory, any *WADA* technical advisor feedback, and the relevant accreditation body (Audit Report), *WADA* will make a final report including a recommendation concerning the accreditation of the laboratory. The report and recommendation will be submitted to the *WADA* Executive Committee for approval. In case that the recommendation is that the laboratory should not be accredited, the laboratory will have a maximum of six (6) months to correct and improve specific parts of their operation, at which time a further report will be made by *WADA*.

6.3.3 Issue and publication of Accreditation certificate

A certificate signed by a duly authorized representative of *WADA* shall be issued in recognition of an accreditation. Such certificate shall specify the name of the Laboratory and the period for which the certificate is valid. Certificates may be

issued after the effective date, with retroactive effect. A list of accredited Laboratories will be published annually by *WADA*.

6.4 Maintaining *WADA* Accreditation

6.4.1 Provide a new letter of support

Letter(s) of Support from a national public authority or *National Olympic Committee or National Anti-Doping Organization* responsible for a national *Doping Control* program or an International Federation responsible for an international *Doping Control* program shall be required in years in which there is an ISO 17025 re-accreditation audit.

A letter of support from the host organization renewing its commitment to the Laboratory shall also be required in conjunction with each ISO 17025 re-accreditation audit.

6.4.2 Document annual number of tests

The Laboratory shall periodically report the results of all tests performed to *WADA* in a specified format. *WADA* will monitor *Sample* test volume performed by the Laboratory. If the number of *Samples* falls below 1500 per year, *WADA* Laboratory accreditation will be suspended or revoked in accordance with Section 6.4.8.

6.4.3 Flexible Accreditation

WADA accredited Laboratories may add or modify scientific methods or add analytes to its scope of work without the need for approval by the body that completed the ISO/IEC 17025 accreditation of that Laboratory. Any analytical method or procedure must be properly selected and validated and included in the scope of the Laboratory at the next ISO audit if use is continued.

6.4.4 Document Compliance with the *WADA* Laboratory Code of Ethics

The Laboratory Director must send a letter of compliance to *WADA* every year.
The Laboratory may be asked to provide documentation of compliance with the provisions of the Code of Ethics (Annex B).

6.4.5 Document implemented research activities

The Laboratory must supply an annual progress report to *WADA* documenting research and development results in the field of *Doping Control* and dissemination of the results. The Laboratory should also relate research and development plans for the next year.

6.4.6 Document implemented sharing of knowledge

The Laboratory must supply an annual report sharing of knowledge with all other *WADA*-accredited Laboratories.

6.4.7 Participate in *WADA*/ISO periodical audits and the re-accreditation audit

WADA reserves the right to inspect and audit the Laboratory at any time. The notice of the audit/inspection will be made in writing to the Laboratory Director. In exceptional circumstances, the audit/inspection may be unannounced.

6.4.7.1 *WADA*/ISO Re-accreditation audit

The Laboratory must receive ISO/IEC 17025 accreditation including compliance with the Application of ISO 17025 for Analysis of *Doping Control Samples* (Section 5 of this document). The audit team may include a *WADA* Consultant to augment the auditing team selected by the national accrediting body for the re-accreditation audit.

Copies of the audit summary report as well as the Laboratory responses must be sent to *WADA*. The Laboratory shall also provide a copy of the ISO 17025 certificate obtained from the national certifying body.

6.4.7.2 ISO Periodical audit

In years when a periodical ISO/IEC 17025 audit is required, the Laboratory shall provide *WADA* with a copy of any external audits and evidence of corrective actions for any non-compliance.

6.4.8 *WADA* report and recommendation

WADA will annually review Laboratory compliance with the requirements listed in Sections 4 and 5. With the exception of re-accreditation and other required on-site audits, the annual review will consist of a documentation audit. *WADA* may require documentation from the Laboratory. Failure of the Laboratory to provide information requested in evaluating performance by the specified date shall be considered a refusal to cooperate and result in Suspension or Revocation of accreditation.

WADA will consider the overall performance of the Laboratory in making decisions regarding continued accreditation. Applicant Laboratory performance on aspects of the standards described in Section 5 (such as turn-around times, Documentation Package contents, and feedback from client organizations) may be considered in this auditing.

6.4.8.1 Maintenance of accreditation

In the event that the Laboratory has maintained satisfactory performance, *WADA* will recommend to the *WADA* Executive Committee that the Laboratory be re-accredited.

6.4.8.2 Suspension of accreditation

Whenever *WADA* has reason to believe that Suspension may be required and that immediate action is necessary in order to protect the interests of *WADA* and the Olympic movement, *WADA* may immediately suspend a Laboratory's accreditation. If necessary, such decision may be taken by the Chairman of the *WADA* Executive Committee.

Examples of actions that could result in Suspension of accreditation include:

- Suspension of ISO 17025 accreditation;
- failure to take appropriate corrective action after an unsatisfactory performance;
- lack of compliance with any of the requirements or standards listed in *WADA International Standard* for Laboratories (including Annex A. Proficiency Testing);
- failure to cooperate with *WADA* or the relevant Testing Authority in providing documentation;
- failure to comply with the *WADA* Laboratory Code of Ethics.

WADA may recommend a Suspension of accreditation at any time based on the results of the Proficiency Testing program.

The period and terms of Suspension shall be proportionate to the seriousness of the non-compliance(s) or lack of performance and the need to ensure accurate and reliable drug testing of *Athletes*. A period of Suspension shall be up to 6 months, during which time any non-compliance must be corrected. If the non-compliance is not corrected during the Suspension period, the Laboratory accreditation will be revoked.

In the case of a non-compliance *WADA* may suspend the Laboratory from performing analyses for any *Prohibited Substances*. If *WADA* determines that the non-compliance is limited to a class of *Prohibited Substances*, *WADA* may limit the suspension to analysis for the class of compounds in which the non-compliance occurred.

6.4.8.3 Revocation of accreditation

The *WADA* Executive Committee revokes accreditation of any Laboratory accredited under these provisions if *WADA* determines that Revocation is necessary to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results. Revocation of accreditation may be based on, but not limited to, the following considerations:

- Loss of ISO 17025 accreditation;
- Unsatisfactory performance in analyzing and reporting results of drug tests
- Unsatisfactory participation in performance evaluations or Laboratory on-site audits;
- Failure to take appropriate corrective action following an unsatisfactory performance either in *Testing* or in a proficiency test;
- A material violation of this standard or other condition imposed on the Laboratory by *WADA*;

- Failure to correct a lack of compliance with any of the requirements or standards listed in *WADA International Standard* for Laboratories (including Annex A. Proficiency Testing) during a Suspension period;
- Failure to cooperate with *WADA* or the relevant Testing Authority during the Suspension phase;
- A serious violation of the Code of Ethics;
- Conviction of any key personnel for any criminal offence committed that is related to the operation of the Laboratory; or
- Any other cause that materially affects the ability of the Laboratory to ensure the full reliability and accuracy of drug tests and the accurate reporting of results.

A Laboratory whose accreditation has been revoked is ineligible to perform testing *of Doping Control Samples* for any Testing Authority.

If a Laboratory whose accreditation has been revoked should seek accreditation, it shall begin the process as a new laboratory as described in Section 4.1, unless there are exceptional circumstances or justifications as determined solely by *WADA*. In the case of exceptional circumstances, *WADA* shall determine what steps shall be followed prior to granting a new accreditation.

6.4.9 Notification

6.4.9.1 Written Notice

When a Laboratory is suspended or *WADA* seeks to revoke accreditation, *WADA* must immediately serve the Laboratory with written notice of the Suspension or proposed Revocation by facsimile mail, personal service, or registered or certified mail, return receipt requested. This notice shall state the following:

1) The reason for Suspension or proposed Revocation;
2) The terms of the Suspension or proposed Revocation; and
3) The period of Suspension.

6.4.9.2 Effective Date

A Suspension is immediately effective. A proposed Revocation is effective 30 calendar days after the date on the written notice or, if review is requested, upon *WADA*'s decision to uphold the proposed Revocation. A Laboratory who has received notice that its accreditation is in the process of being revoked shall be suspended until the Revocation is made final or is rescinded by *WADA*. If *WADA* decides not to uphold the Suspension or proposed Revocation, the Suspension is terminated immediately and any proposed Revocation shall not take place.

6.4.9.3 Public Notice

WADA will immediately notify all relevant national public authorities, *National Anti-Doping Organizations*, *National Olympic Committees*, International Federations, and the IOC of the name and address of any Laboratory that has had its accreditation suspended or revoked, and the name of any Laboratory that has had its Suspension lifted.

WADA will provide to any Testing Authority, upon written request, *WADA*'s written decision which upholds or denies the Suspension or proposed Revocation.

6.4.10 Re-accreditation Costs

On an annual basis, *WADA* will invoice the Laboratory for a portion of the costs associated with the re-accreditation process. The Laboratory shall assume the travel and accommodation expenses of the *WADA* representative(s) in the event of on-site inspections.

6.4.11 Issue and publication of Accreditation certificate

If maintenance of accreditation is approved, the Laboratory shall receive a certificate signed by a duly authorized representative of *WADA* issued in recognition of such accreditation. Such certificate shall specify the name of the Laboratory and the period for which the certificate shall be valid. Certificates may be issued after the effective date, with retroactive effect.

6.5 Accreditation Requirements for Satellite Facilities for Major *Events*

In general, the reporting time requirements for a major *Event* require that the Laboratory facility be at the location in proximity to the competition such that *Samples* can be delivered by *Event Doping Control* staff. This may require re-location of an existing Laboratory for a period of time sufficient to validate operations at the satellite facility and perform the testing for the *Event*.

In extraordinary circumstances, *Samples* may be transferred to an existing Laboratory facility. There must be agreement between the *Major Event Organization* and *WADA* regarding whether testing requirements such as turn-around time and the *Athlete* rights are met for in any eventuality. If the Laboratory is functioning within its regular facility, the requirements stated below with respect to facilities do not apply. The Laboratory will, however, be required to report on staffing, equipment, and *Sample* transport issues.

The Laboratory shall be responsible for providing *WADA* with regular updates on the progress of the testing facilities.

6.5.1 Participate in an initial *WADA*/ISO visit/inspection

WADA may visit the Laboratory facility as soon as it is available to determine whether the facility is adequate. Expenses related to such a visit shall be at the Laboratory's expense. Particular emphasis will be placed on the adequacy of security

considerations, the physical layout of the space to ensure that adequate separation of various parts of the Laboratory are maintained, and to provide a preliminary review of other key support elements.

6.5.2 Document ISO/IEC 17025 accreditation of the satellite facility

At least one month prior to the major *Event*, the Laboratory must provide documentation that the national accrediting body has provided ISO/IEC accreditation for the satellite facility in compliance with the Application of ISO/IEC 17025 to the Analysis of *Doping Control Samples* (Section 5). *WADA* may require that a *WADA* consultant be present at the national accrediting body audit of the satellite facility. *WADA*'s expenses associated with such audit, will be at the Laboratory's expense.

6.5.3 Complete a Pre-*Event* Report on Facilities and Staff

At least one (1) month prior to the *Event*, the Laboratory must report:

- List of Laboratory staff
- List of staff scientists not normally employed by the Laboratory (if required)
- Training plan for new staff scientists
- List of instrumental resources and equipment
- Procedure manual specific to the satellite facility including analytical methods
- Summary of results management process including criteria for determining positive and negative results
- Methods of reporting test results in a secure manner to the appropriate authorities

Any changes that occur prior to the *Event* should be immediately reported to *WADA*.

Even if the testing is to be done at the Laboratory's regular facility, the Pre-*Event* Report must be completed, particularly in regard to personnel changes and any additional equipment.

6.5.4 Participate in *WADA* accreditation audit

WADA may choose to perform an independent on-site audit or a document audit of the satellite facility. Should an on-site audit take place, *WADA* expenses related to the audit will be at the Laboratory's expense. This audit may include analysis of a set of proficiency testing samples. The full complement of staff must be in attendance. Particular emphasis will be placed on involvement of new staff members to assess their competence.

6.5.5 Review the reports and correct identified non-conformities

The Laboratory Director must address and correct any identified non-compliances. The audit report and documentation of the corrective actions must be submitted to *WADA*.

6.5.6 Issue and publication of a temporary and limited Accreditation certificate

Based on the documentation provided, *WADA* shall make a decision regarding accreditation of the Laboratory. In the event that accreditation is awarded, *WADA* shall issue an accreditation for the period of the *Event* and an appropriate time before and after the actual competition.

6.5.7 Monitoring and assessment during the *Event*

WADA may choose at its sole discretion to have an observer in the Laboratory during the *Event*. The Laboratory Director is expected to provide full cooperation to the observer.

WADA, in conjunction with the *Major Event Organization*, will submit double blind proficiency testing samples to the Laboratory.

In the event of a false positive, the Laboratory will immediately cease testing for the class of *Prohibited Substances and Methods*. The Laboratory shall apply corrective actions within 12 hours of notification of the false positive. All *Samples* analyzed prior to the false positive will be re-analyzed for the class of *Prohibited Substances and Methods* for which the non-compliance occurred. The results of the investigation and analysis will be presented to *WADA* within 24 hours unless otherwise agreed in writing.

In the event of a false negative, the Laboratory will be required to investigate the root cause and apply corrective actions within 24 hours of notification of the false negative result. A representative group of *Samples* in appropriate number to ensure that the risk of false negatives is minimal will be re-analyzed for the class of *Prohibited Substances and Methods* for which the non-compliance occurred. The results of the investigation and analysis will be presented to *WADA* within 48 hours unless otherwise agreed in writing.

7.0 Requirements for supporting an *Adverse Analytical Finding* in the Adjudication Process

This section describes the relevant procedures to be followed where an *Athlete* challenges an *Adverse Analytical Finding* in a hearing as provided for by the *Code.*

7.1 Laboratory Documentation Package

In support of any *Adverse Analytical Finding* the Laboratory is required to provide the Laboratory Documentation Package described in detail in the Technical Document on Laboratory Documentation Packages.

The Laboratory is not required to provide any documentation not specifically included in the Laboratory Documentation Package. Therefore, the Laboratory is not required to support an *Adverse Analytical Finding* by producing, either to the Testing Authority

or in response to discovery requests related to the hearing, standard operating procedures, general quality management documents (e.g., ISO compliance documents) or any other documents not specifically required by Technical Document on Laboratory Documentation Packages. References in the *International Standard* for Laboratories to ISO requirements are for general quality control purposes only and have no applicability to any adjudication of any specific *Adverse Analytical Finding.*

PART THREE: ANNEXES

ANNEX A - *WADA* PROFICIENCY TESTING PROGRAM

The *WADA* Proficiency Testing (PT) Program is designed to evaluate Laboratory proficiency and to improve test result uniformity between Laboratories, and to provide educational opportunities for the *WADA*-accredited Laboratories. The purpose of the individual PT sample will determine its composition and form.

1. Probationary period

The Proficiency Testing (PT) program is a part of the initial evaluation of a Laboratory seeking accreditation. In addition to providing samples as part of quarterly PT samples, the *WADA* will provide upon request samples from past PT rounds in order to allow the applicant Laboratory with an opportunity to evaluate its performance against the recorded performance of accredited Laboratories.

All procedures associated with the handling and testing of the PT samples by the Laboratory are, to the greatest extent possible, to be carried out in a manner identical to that applied to routine Laboratory *Samples*, unless otherwise specified. No effort should be made to optimize instrument (e.g., change multipliers or chromatographic columns) or method performance prior to analyzing the PT samples unless it is a scheduled maintenance activity. Methods or procedures used in routine testing should be employed.

Successful participation in 12-24 months of PT sample rounds is required before a Laboratory is eligible to be considered for accreditation. The PT samples shall occur at least quarterly and will consist of a minimum of five (5) samples per challenge. At least four (4) PT samples will contain Threshold Substances. Blank and adulterated samples may also be included.

2. Maintenance/Re-accreditation period

After accreditation, Laboratories shall be challenged with at least five (5) PT samples each quarter. Each year at least two (2) samples will contain Threshold Substances. Blank and adulterated samples may be included.

All procedures associated with the handling and testing of the PT samples by the Laboratory are, to the greatest extent possible, to be carried out in a manner identical to that applied to routine Laboratory *Samples*, unless otherwise specified. No effort should be made to optimize instrument (e.g., change multipliers or chromatographic columns) or method performance prior to analyzing the PT samples unless it is a scheduled maintenance activity. Methods or procedures not used in routine testing should not be employed.

2.1 Open PT Samples
The Laboratory may be directed to analyze a PT sample for a specific *Prohibited Substance*. In general, this approach is used for educational purposes or for data gathering.

2.2 Blind PT Samples
The Laboratory will be aware that the sample is a PT sample, but will not be aware of the content of the sample. Performance on blind PT samples is to be at the same level as for the open or non-blind PT samples.

2.3 Reporting – Open and Blind Proficiency Samples
The Laboratory should report the results of open and blind PT samples to *WADA* in the same manner as specified for routine *Samples*. For some samples or PT sample sets, additional information may be requested from the Laboratory.

2.4 Double Blind Proficiency Sample
The Laboratory will receive PT sample sets which are indistinguishable from normal testing samples. The samples may consist of blank, adulterated or positive samples. These samples may be used to assess turn-around time, compliance with documentation package requirements, and other non-analytical performance criteria as well as Laboratory proficiency.

3. Proficiency Test Sample Composition

3.1 Description of the Drugs
PT samples contain those *Prohibited Substances*, *Metabolite*(s) of *Prohibited Substances*, and *Marker*(s) of *Prohibited Substances and Methods* which each accredited Laboratory must be prepared to assay in concentrations that allow detection of the analytes by commonly used screening techniques. These are generally concentrations that might be expected in the urine of drug users. For some analytes, the sample composition may consist of the parent drug as well as major *Metabolites*. The actual composition of the PT samples supplied to different Laboratories in a particular PT sample may vary but, within any annual period, all Laboratories participating are expected to have analyzed the same total set of samples.

A sample may contain more than one *Prohibited Substance*, *Metabolite(s)*, or *Marker* of a *Prohibited Substance or Method*. A PT sample will not contain more than three substances or their *Metabolite(s)*, or *Markers* of *Prohibited Substances or Methods*. It is possible that the sample will contain multiple *Metabolites* of a single substance, which would represent the presence of a single *Prohibited Substance*. All *Metabolites* detected should be reported according to the Laboratory's standard operating procedures.

3.2 Concentrations
PT samples may be spiked with *Prohibited Substances* and/or their *Metabolites* or may be from authentic administration studies. For Threshold Substances, the

concentration in the sample will be guided by, but not limited to, one of the following criteria:

i) at least 20 percent above the threshold for either the initial assay or the confirmatory test, depending on which is to be evaluated;

ii) near or below the threshold limit for special purposes. In this case, the Laboratory would be directed to analyze the *Sample* for a particular *Prohibited Substance* as part of an educational challenge and will not be considered for evaluation for the purposes of the PT program.

For Non-threshold Substances, the concentration will be guided by, but not limited to, one of the following criteria:

i) the *Prohibited Substance* and/or its major *Metabolite(s)* will be present in quantities greater than the Minimum Required Performance Limit;
ii) the *Prohibited Substance* and/or its major *Metabolite(s)* will be present near the limit of detection for special purposes. In this case, the Laboratory would be directed to analyze the sample for a particular *Prohibited Substance* as part of an educational challenge and will not be considered for evaluation for the purposes of the PT program.

These concentrations and drug types may be changed periodically in response to factors such as changes in detection technology and patterns of drug use.

Negative samples do not contain concentrations of any of the target drugs above the Minimum Required Performance Limit when analyzed by the normally used methods.

3.3 Blank or Adulterated *Samples*

PT samples include those that do not contain prohibited drugs or samples which have been deliberately adulterated by the addition of extraneous substances designed to dilute the sample, degrade the analyte or to mask the analyte during the analytical determination.

4. Evaluation of Proficiency Testing Results

4.1 Evaluation of Quantitative Results

When a quantitative determination has been reported, the results can be scored based on the true or consensus value of the sample analyzed and a standard deviation which may be set either by the group results or according to the expected precision of the measurement. The z-score is calculated using the equation

$$z = \frac{\bar{x} - \hat{x}}{\delta}$$

Where x is the value found

$\hat{x}$ is the assigned value

δ is the target value for standard deviation

The target relative standard deviation will be set in such a way that an absolute z-score between two (2) and three (3) is deemed **questionable** performance. A z-score greater than three (3) is deemed **unacceptable** performance.

In addition, re-scaled sum of score (RSZ) and re-scaled sum of squared scores (RSSZ) will be calculated. While the z score gives an estimate of bias, the RSZ, by retaining the sign of the biases, will reflect consistent systematic bias. The RSSZ, by eliminating the possibility that positive and negative bias will cancel, provides another indicator of bias. The RSZ and RSSZ are calculated by the equations

$$RSZ = \sum \frac{z}{\sqrt{m}}$$

$$RSSZ = \sum \frac{z^2}{m}$$

where m is the number of tests.

4.2 Probationary Period

4.2.1 Any false positive reported automatically disqualifies a Laboratory from further consideration for accreditation. The Laboratory will be eligible for reinstatement upon providing documentation that satisfies *WADA* that remedial and preventative actions have been implemented.

4.2.2 An applicant Laboratory is to achieve an overall grade level of 90 percent for PT samples required during the probationary period, i.e., it must correctly identify and confirm 90 percent of the total drug challenges (qualitative including adulterated samples).

4.2.3 An applicant Laboratory is to obtain satisfactory Z-scores for any quantitative results reported based on the mean of three replicate determinations. For the purposes of accreditation a quantitative result is required for threshold drugs. The relative standard deviation is to be commensurate with the validation data.

Any Laboratory that fails to achieve a satisfactory score for at least 90% of the quantitative determinations during the probationary period will be disqualified from further consideration. If the Laboratory receives fewer than 10 samples for quantitation in the year, the Laboratory may be allowed a single unsatisfactory result in the quantitative portion of the PT program during a 12 month period. The Laboratory will be eligible for reinstatement upon providing documentation that satisfies *WADA* that remedial and preventative actions have been implemented.

4.3 Maintenance and Re-Accreditation Period

4.3.1 No false positive drug identification is acceptable for any drug and the following procedures are to be followed when dealing with such a situation:

i) The Laboratory is immediately informed of a false positive error by the *WADA*.

ii) The Laboratory is to provide the *WADA* with a written explanation of the reasons for the error within five (5) working days. This explanation is to include the submission of all quality control data from the batch of samples that included the false positive sample if the error is deemed to be technical/scientific.

iii) The *WADA* shall review the Laboratory's explanation promptly and decide what further action, if any, to take.

iv) If the error is determined to be an administrative error (clerical, sample mix-up, etc), the *WADA* may direct the Laboratory to take corrective action to minimize the occurrence of the particular error in the future and, if there is reason to believe the error could have been systematic, may require the Laboratory to review and re-analyze previously run *Samples*.

v) If the error is determined to be a technical or methodological error, the Laboratory may be required to re-test all *Samples* analyzed positive by the Laboratory from the time of final resolution of the error back to the time of the last satisfactory proficiency test round. A statement signed by the Laboratory Director shall document this re-testing. The Laboratory may also be required to notify all clients whose results may have been affected of the error as part of its quality management system. Depending on the type of error that caused the false positive, this retesting may be limited to one analyte, a class of *Prohibited Substances or Methods*, or may include any prohibited drug. The Laboratory shall immediately notify the *WADA* if any result on a *Sample* that has been reported to a client is detected as a false positive. *WADA* may suspend or revoke the Laboratory's accreditation. However, if the case is one of a less serious error for which effective corrections have already been made, thus reasonably assuring that the error will not occur again, the *WADA* may decide to take no further action.

vi) During the time required to resolve the error, the Laboratory remains accredited but has a designation indicating that a false positive result is pending resolution. If the *WADA* determines that the Laboratory's accreditation must be suspended or revoked, the Laboratory's official status becomes "Suspended" or "Revoked" until the Suspension or Revocation is lifted or any process complete.

4.3.2 An accredited Laboratory must correctly identify 100 percent of the *Prohibited Substances* to pass the round of PT samples. It must correctly identify and confirm 100 percent of the total PT samples (qualitative including adulterated samples).

4.3.3 An accredited Laboratory is to obtain satisfactory Z-scores for any quantitative results reported based on the mean of three replicate determinations. For the purposes of accreditation a quantitative result is required for threshold drugs.

The relative standard deviation is to be commensurate with the validation data.

Any Laboratory that fails to achieve a satisfactory score for quantitative determinations will be deemed to have failed that sample challenge. The Laboratory must achieve a satisfactory score on 90% of the quantitative samples during the year. If the Laboratory receives fewer than 10 samples for quantitation in the year, the Laboratory may be allowed a single unsatisfactory result in the quantitative portion of the PT program during a 12 month period.

4.4 Laboratories failing a proficiency test round are informed immediately by *WADA*. Laboratories must take and report corrective action within 30 calendar days to *WADA*. Laboratories may otherwise be advised by *WADA* to take corrective action for a given reason or to change a corrective action which has previously been reported to *WADA*. The corrective action reported to *WADA* must be implemented in the routine operation of the Laboratory. Repeated failures of the same type will result in *WADA* requiring corrective action.

Laboratories failing two consecutive rounds of the PT scheme will be immediately suspended. The Laboratory is required to provide documentation of corrective action with 10 working days of notification of Suspension. Failure to do so will result in immediate Revocation of the accreditation. Lifting of the Suspension occurs only when corrective action has been taken and reported to the *WADA*. The *WADA* may choose, at its sole discretion, to submit additional PT samples to the Laboratory or to require that the Laboratory be re-audited, at the expense of the Laboratory after having furnished satisfactory results for another proficiency testing round.

4.5 *WADA* is to evaluate the annual performance of all accredited Laboratories.

ANNEX B - LABORATORY CODE OF ETHICS

1. Confidentiality

The heads of Laboratories, their delegates and Laboratory staff shall not discuss or comment to the media on individual results prior to the completion of any adjudication without consent of the organization that supplied sample to the Laboratory and the organization that is asserting the *Adverse Analytical Finding* in adjudication.

2. Research

Laboratories are entitled to participate in research programs provided that the Laboratory director is satisfied with the *bona fide* nature and the programs have received proper ethical (e.g. human subjects) approval.

2.1. Research in Support of *Doping Control*

The Laboratories are expected to develop a program of research and development to support the scientific foundation of *Doping Control*. This research may consist of the development of new methods or technologies, the pharmacological characterization of a new doping agent, the characterization of a masking agent or method, and other topics relevant to the field of *Doping Control*.

2.2. Human subjects

The Laboratories must follow the Helsinki Accords and any applicable national standards as they relate to the involvement of human subjects in research.

Voluntary informed consent must also be obtained from human subjects in any drug administration studies for the purpose of development of a Reference Collection or proficiency testing materials.

2.3. Controlled substances

The Laboratories are expected to comply with the relevant national laws regarding the handling and storage of controlled (illegal) substances.

3. Testing

3.1. Competitions

The Laboratories shall only accept and analyze *Samples* originating from known sources within the context of *Doping Control* programs conducted in competitions organized by national and international sports governing bodies. This includes national and international federations, *National Olympic Committees*, national associations, universities, and other similar organizations. This rule applies to Olympic and non-Olympic sports.

Laboratories should exercise due diligence to ascertain that the *samples* are collected according to the World Anti-Doping *Code International Standard* for

Testing or the International Standard for Doping Control (ISO/PAS 18873), or similar guidelines. These guidelines must include collection of Split Samples; appropriate *Sample* container security considerations; and formal chain of custody conditions.

3.2. *Out-of-competition*

The Laboratories shall accept *Samples* taken during training (or *Out-of-competition*) only if the following conditions are simultaneously met:

(a) That the *Samples* have been collected and sealed under the conditions generally prevailing in competitions themselves as in Section 3.1 above;
(b) If the collection is a part of an anti-doping program; and
(c) If appropriate sanctions will follow a positive case.

Laboratories shall not accept *Samples*, for the purposes of either screening or identification, from commercial or other sources when the conditions in the above paragraph are not simultaneously met.

Laboratories shall not accept *Samples* from individual *Athletes* on a private basis or from individuals or organizations acting on their behalf.

These rules apply to Olympic and non-Olympic sports.

3.3. Clinical or Forensic

Occasionally the Laboratory is requested to analyze a *Sample* for a banned drug or endogenous substance allegedly coming from a hospitalized or ill *Person* in order to assist a physician in the diagnostic process. Under this circumstance, the Laboratory director must explain the pre-testing issue to the requester and agree subsequently to analyze the *Sample* only if a letter accompanies the *Sample* and explicitly certifies that the *Sample* is for medical diagnostic or therapeutic purposes.

The letter must also explain the medical reason for the test.

Work to aid in forensic investigations may be undertaken but due diligence should be exercised to ensure that the work is requested by an appropriate agency or body. The Laboratory should not engage in testing or expert testimony that would call into question the integrity of the individual or the scientific validity of work performed in the anti-doping program.

3.4. Other Testing

If the Laboratory accepts *Samples* from an entity that is not a Testing Authority recognized by the World Anti-Doping *Code*, it is the responsibility of the Laboratory Director to ensure that any *Adverse Analytical Finding* will be processed according to the *Code* and that the results cannot be used in any way by an *Athlete* or associated *Person* to avoid detection.

The Laboratory should not engage in testing that undermines or is detrimental to the anti-doping program of *WADA*. The Laboratory should not provide results that in any way suggests endorsement of products or services for *Athletes* or sports authorities. The Laboratory should not provide testing services in defense of an *Athlete* in a *Doping Control* adjudication.

3.5. Sharing of Information and Resources

3.5.1 New Substances

The *WADA*-accredited Laboratories for *Doping Control* shall inform *WADA* when they detect a new or suspicious doping agent.

When possible, the Laboratories shall share information regarding the detection of potentially new or rarely detected doping agents

3.5.2 Sharing of Knowledge

Sharing of knowledge shall consist of, but not be limited to, dissemination of information about new *Prohibited Substances and Methods* and their detection within sixty (60) days of discovery. This can occur by participation in scientific meetings, publication of results of research, sharing of specific details of methodology necessary for detection, and working with *WADA* to distribute information by preparation of a reference substance or biological excretion study or information regarding the chromatographic retention behaviour and mass spectra of the substance or its *Metabolites*. The Laboratory director or staff shall participate in developing standards for best practice and enhancing uniformity of testing in the *WADA*-accredited Laboratory system. An example of the latter would be in establishing reporting standards for determination of an *Adverse Analytical Finding*.

4. Conduct Detrimental to the Anti-Doping Program

The Laboratory personnel shall not engage in conduct or activities that undermine or are detrimental to the anti-doping program of *WADA*, an International Federation, a *National Anti-Doping Organization*, a *National Olympic Committee*, a *Major Event Organization* Committee, or the International Olympic Committee. Such conduct could include, but is not limited to, conviction for fraud, embezzlement, perjury, etc. that would cast doubt on the integrity of the anti-doping program.

No Laboratory employee or consultant shall provide counsel, advice or information to *Athletes* or others regarding techniques or methods to mask detection of, alter metabolism of, or suppress excretion of a *Prohibited Substance* or *Marker* of a *Prohibited Substance* or Method in order to avoid an *Adverse Analytical Finding*. No Laboratory staff shall assist an *Athlete* in avoiding collection of a *Sample*. This paragraph does not prohibit presentations to educate *Athletes*, students, or others concerning anti-doping programs and *Prohibited Substances* or *Methods*.

ANNEX C - LIST OF TECHNICAL DOCUMENTS

Title	Document Number	Version Number	Effective Date
Laboratory Internal Chain of Custody	TD2003LCOC	1.2	Jan 1, 2004
Laboratory Documentation Packages	TD2003LDOC	1.3	Jan 1, 2004
Minimum Required Performance Limits for Detection of Prohibited Substances	TD2004MRPL	1.0	Feb15,2004
Identification Criteria for Qualitative Assays Incorporating Chromatography and Mass Spectrometry	TD2003IDCR	1.2	Jan 1, 2004
Reporting Norandrosterone Findings	TD2004NA	1.0	Aug13, 2004
Reporting and Evaluation Guidance for Testosterone, Epitestosterone, T/E Ratio and other Endogenous Steroids	TD2004EAAS	1.0	Aug13, 2004
Harmonization of the Method for the Identification of Epoetin Alfa and Beta (EPO) and Darbepoetin Alfa (NESP) by IEF-Double Blotting and Chemiluminescent Detection	TD2004EPO	1.0	*In progress*
Measurement of Uncertainty for Anti-Doping Analysis			*Future*
Reporting Guidance for Gas Chromatography/Combustion/ Isotope Ratio Mass Spectrometry			*Future*
Reporting Guidance for Salbutamol and other Beta-2 Agonists			*Future*

TAB 9

Document Number:	TD2004EAAS	Version Number:	1.0
Written by:	WADA Laboratory Committee	Approved by:	WADA Executive Committee
Date:	30 May, 2004	Effective Date:	13 August, 2004

REPORTING AND EVALUATION GUIDANCE FOR TESTOSTERONE, EPITESTOSTERONE, T/E RATIO AND OTHER ENDOGENOUS STEROIDS

1. Introduction:

This guide has been prepared to ensure that Laboratories can report, in a uniform way, the presence of abnormal profiles of urinary steroids resulting from the administration of testosterone or its precursors, androstenediol, androstenedione, dehydroepiandrosterone (DHEA) or a testosterone metabolite, dihydrotestosterone or a masking agent, epitestosterone. It also provides guidance to the Testing Authority on how to conduct the evaluation of *Adverse Analytical Findings* reported by the Laboratories.

It is proven that administration of these steroids alters one or more of the parameters of the urinary steroid profile. Elevated levels of urinary metabolites, which are part of the "steroid profile", e.g. testosterone, epitestosterone, dihydrotestosterone, androsterone, etiocholanolone, DHEA as well as other specific metabolites are not consistent with normal endogenous production and result from the intake of these steroids. Increased ratios of specific pairs of steroid metabolites are also indicative of the administration of these endogenous steroids.

It is emphasized that the following requirements shall be applied by all Laboratories in their routine practice.

2. Specific requirements for GC/MS measurement of T/E value, concentration of testosterone, concentration of epitestosterone:

The T/E value is given by the peak area or peak height ratio of testosterone and epitestosterone (equivalent to the glucuronide) obtained by measuring the ion at m/z 432 by GC/MS analysis in a Single Ion Monitoring mode (SIM). The T/E value is usually measurable regardless of the concentration of both steroids. Whether measured from the Screening Procedure or the Confirmation Procedure, it must be corrected using an appropriate standard (e.g. calibration curve, quality control sample(s) or authentic standard solutions of both testosterone and epitestosterone). The concentration of testosterone and epitestosterone (equivalent to the glucuronide) should be estimated but should not be used to determine the T/E value. In the case of high T/E values, the concentration of epitestosterone is frequently low and it may not always be possible to measure epitestosterone precisely. In such cases, only the concentration of testosterone (equivalent to the glucuronide) is to be determined.

The Screening Procedure which is normally conducted on a single aliquot shall be carried out including, together in the same batch, a control sample where the T/E value, concentrations of testosterone and epitestosterone are known.

Reference ranges of the various parameters of the urinary steroid profile have been described for populations of both males and females. It should be borne in mind that there is significant

variation between individuals . A normal level for one individual may in another be elevated and be consistent with doping. The Laboratory will adapt its testing procedures to the *Sample* tested; for example, female or male, Asian or Caucasian (when the information is provided). The concentration of urinary steroids such as testosterone and epitestosterone varies greatly between individuals and also depends upon the specific gravity of the urine *Sample*; only values corrected for a specific gravity value of 1.020 can be compared.

It is recommended that a urine *Sample* in which any one of the following criteria is met during the Screening Procedure, be routinely submitted to the IRMS analysis:

i) T/E value equal or greater than 4;
ii) concentration of testosterone or epitestosterone (equivalent to the glucuronide) greater than 200 ng/mL[1];
iii) concentration of androsterone or etiocholanolone (equivalent to the glucuronide) greater than 10,000 ng/mL[1];
iv) concentration of DHEA (equivalent to the glucuronide) greater than 100 ng/mL[1].

It is recognised that other parameters may justify a need for IRMS study and the reason should be documented.

Any result that will be used to support an *Adverse Analytical Finding* shall be confirmed and quantified.

Confirmation of elevated T/E values, concentration of testosterone, epitestosterone or any other steroid metabolite under consideration is to be performed in triplicate. The confirmation of the identity of any steroid reported with abnormal properties must be made (refer to technical document TD2003IDCR). Appropriate calibration (e.g. calibration curve, deuterated standards, quality control samples) is to be included in the protocol of the Confirmation Procedure.

Confirmed elevated concentration of steroids will be reported as such together with the value adjusted for the specific gravity of the urine *Sample* using the following formula:

$$\text{Concentration}_{1.020}\ \text{ng/mL} = (1.020 - 1) / (\text{Specific gravity}_{\text{ of the } Sample} - 1) \bullet \text{Concentration measured ng/mL}$$

The urine *Sample* is not collected under sterile conditions, and where the circumstances are favourable, the microbes present in the *Sample* can cause changes to the profile of the urinary steroids. Initially there is cleavage of the glucuronides and sulfates followed by modifications of the steroids' structure by oxido-reductive reactions. To report an *Adverse Analytical Finding* of an elevated T/E value, testosterone or epitestosterone concentration or any other endogenous steroid parameters, the concentration of free testosterone and/or epitestosterone in the specimen is not to exceed 5% of the respective glucuroconjugates. Elevated amounts of 5α- and 5ß-androstan-3,17-dione in the free form also indicate microbial degradation.

[1] Concentrations adjusted for a specific gravity value of 1.020

3. Isotope ratio mass spectrometry:

When a parameter of the steroid profile indicates a need to further study, its $^{13}C/^{12}C$ value expressed in delta units per mil ($d\ ^0/_{00}$) or that of its metabolites will be measured and compared to that of urinary reference steroids within the sample not affected by administration. Depending upon the nature of the endogenous steroid suspected to have been administered, the metabolites analysed could be testosterone, epitestosterone, androsterone, etiocholanolone, the androstanediols, DHEA, or other relevant metabolites while the urinary reference steroid usually analysed by the Laboratories is one of, pregnanediol, pregnanetriol, cholesterol, 11-hydroxyandrosterone or 11-ketoetiocholanolone. The instrumentation should be calibrated with an appropriate Reference Material.

The results will be reported as consistent with the administration of a steroid when the $^{13}C/^{12}C$ value measured for the metabolite(s) differs significantly i.e. by 3 delta units or more from that of the urinary reference steroid chosen. In some *Samples*, the measure of the $^{13}C/^{12}C$ value of the urinary reference steroid(s) may not be possible due to their low concentration. The results of such analyses will be reported as "inconclusive" unless the ratio measured for the metabolite(s) is below -28‰ based on non-derivatised steroid.

4. Reviewing and evaluating test results:

The following actions should be requested by the Testing Authority in agreement with the Laboratory:

- Isotopic ratios ($^{13}C/^{12}C$) of the relevant metabolites should whenever possible be measured each time an elevated parameter of the steroid profile is estimated from the Screening Procedure or Confirmation Procedure and reported to the Testing Authority as having been determined. If the Laboratory does not have the capability to conduct such testing, the *Samples* are to be securely transferred ensuring the Chain of Custody to another Laboratory with the requisite capability.

- The results of the IRMS analysis and/or of the steroid profile measured by GC/MS shall be used to draw conclusions as to whether a doping violation may have been committed. If the IRMS study does not readily indicate exogenous administration, the result should be reported as "inconclusive" and if necessary further longitudinal studies performed.

- When available, the athlete's previous tests on record at the Testing Authority should be accessed and the corresponding steroid profile data requested from the relevant Laboratory. These results should be examined and considered together with the existing evidence (longitudinal study).

- If, for any reason, an IRMS analysis cannot be carried out satisfactorily (e.g. insufficient volume of urine, amount of analyte too low to enable a valid measurement) or the examination of previous test results raises suspicions due to unstable profile values, up to three further unannounced tests should be carried out, preferably within a three months period following the report of the suspicious analytical result. There should be a minimum total of three results, other than the abnormal *Sample*, of either past or post data. A *Sample* in which the elevated parameter is again measured is to be analysed by IRMS as described above. In difficult cases longer monitoring may be required.

5. Evaluation of longitudinal studies:

In males, the individual T/E values have been shown to vary from their mean value by less than 30% (screening values). In females, a low concentration of some urinary steroids such as epitestosterone and testosterone, close to the limit of detection using current analytical methods occurs. Normal variation of up to 60% may be expected. The individual basal T/E value should be determined from at least three test results, excluding the suspicious result under consideration. The mean, standard deviation and coefficient of variation (expressed in percent) should be calculated for those three basal values. If the suspicious test result, when compared to the basal value using appropriate statistical evaluation is found to be significantly different, that will constitute a proof of the administration of a source of testosterone. It is understood that the basal value may be calculated from previous screening test results. The comparison of screening results and confirmed results is acceptable.

The same reasoning applies to any other parameter of the steroid profile which has been estimated to be in an amount exceeding the ranges of values normally found in humans.

6. Other parameters:

Other parameters such as the ratio of urinary testosterone to Lutenising Hormone (T/LH) and the androsterone to testosterone ratio (A/T) may be used to provide extra information to help determine the use of some substances especially injected testosterone and many of its esters. A high T/LH ratio may be used as ancillary evidence. The A/T ratio which has markedly changed from the "normal" value found for an individual during a longitudinal study may indicate which type of substance has been used. A change to high value can indicate testosterone use and a change to low values may indicate the use of testosterone precursors such as DHEA. However, any administration of testosterone and of its precursors, androstenedione or DHEA will not necessarily alter the excretion of LH and epitestosterone glucuronide.

7. Examples of specific urinary metabolites potentially altered by the administration of "endogenous steroids";

Urinary steroid	Steroid administered
Testosterone (G)	Testosterone, androstenedione, DHEA
Epitestosterone (G)	Epitestosterone
T/E (G)	Testosterone, androstenedione, DHEA
Androsterone (G)	Testosterone, DHT, androstenedione, DHEA and androstenediol
Etiocholanolone (G)	Testosterone, androstenedione, DHEA and androstenediol
DHEA (G) (S)	DHEA
6a-OH Androstenedione (G)	Androstenedione
6β-OH Androsterone (G)	Androstenedione
6β-OH Etiocholanolone(G)	Androstenedione
6β-OH Epiandrosterone (S)	Androstenedione
7β-OH DHEA/16α-OH Androsterone (S)	DHEA
7-OH DHEA, 7 keto DHEA	7 keto DHEA

* *G indicates the glucuronide and S indicates sulphate conjugation.*

The official text of the technical document Reporting and Evaluation Guidance for Testosterone, Epitestosterone, T/E Ratio and other Endogenous Steroids shall be maintained by *WADA* and shall be published in English and French. In the event of any conflict between the English and French versions, the English version shall prevail.

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TAB 10

WADA Technical Document – TD2004MRPL

Document Number:	TD2004MRPL	Version Number:	1.0
Written by:	WADA Project Team	Approved by:	WADA Executive Committee
Date:	January 15, 2004	Effective Date:	February 15, 2004

MINIMUM REQUIRED PERFORMANCE LIMITS FOR DETECTION OF *PROHIBITED SUBSTANCES*

In order to ensure that all *Doping Control* Laboratories can report the presence of *Prohibited Substances*, their *Metabolite(s)* or their *Marker(s)* in a uniform way, a minimum routine detection capability for testing methods has been established. It is recognized that some Laboratories will be able to identify a wider range or lower concentrations of *Prohibited Substances* than other Laboratories. While such individual capabilities are encouraged in order to improve the overall system, it is also recognized that there are Minimum Required Performance Limit (MRPL) at which all Laboratories must be able to operate.

The MRPL is not a threshold, nor is it a limit of detection or a limit of quantification. *Adverse Analytical Findings* may result from concentrations below those listed in the table.

The following table lists general requirements for detection of concentrations of representative substances in the classes of *Prohibited Substances* and, where applicable, specific exceptions.

Minimum Required Performance Limits

Prohibited Class	Specific Examples/ Exceptions	Concentration
Stimulants[a]		0.5 µg/mL
	Strychnine	0.2 µg/mL
Narcotics		0.2 µg/mL
	Buprenorphine	10 ng/mL
Anabolic Agents[a]		10 ng/mL
	Clenbuterol	2 ng/mL
	Methandienone[b]	2 ng/mL
	Methyltestosterone[c]	2 ng/mL
	Norandrosterone	1 ng/mL
	Stanozolol[d]	2 ng/mL
	Epitestosterone	2 ng/mL
β-blockers		0.5 µg/mL
Diuretics[e]		0.25 µg/mL
Glucocorticosteroids		30 ng/mL
Peptide Hormones		
	hCG	5 mIU/mL

[a] For the parent compound or the main metabolite.

[b] 17β-methyl-5β-androst-1-ene-3α,17α-diol.

[c] 17α-methyl-5β-androstane-3α,17β-diol.

[d] 3'-hydroxystanozolol.

[e] for thiazides: metabolites and degradation compounds.

Document Number:	TD2004MRPL	Version Number:	1.0
Written by:	WADA Project Team	Approved by:	WADA Executive Committee
Date:	January 15, 2004	Effective Date:	February 15, 2004

For the Non-Threshold Substances, the Laboratory should document at least annually (or whenever major repairs are made on instrumentation) that they can identify representative substances from the class of compounds. Where substance-specific MRPLs are given, the Laboratory should conduct tests on those compounds.

Laboratories must be able to routinely detect substances at or above the concentrations given in the above table.

It is presumed that these concentrations and drug types will be changed periodically due to factors such as changes in detection technology and patterns of drug abuse.

Test methods must also reliably establish the presence of Threshold Substances at concentrations greater than the threshold. The thresholds are listed in the table below.

Compound	Threshold
Carboxy-THC [a]	>15 ng/mL
Cathine	> 5 µg/mL
Ephedrine	> 10 µg/mL
Epitestosterone [b]	> 200 ng/mL
Methylephedrine	> 10 µg/mL
Morphine [c,d]	> 1 µg/mL
19-norandrosterone (males & females) [e]	> 2 ng/mL
Salbutamol [c,f]	> 1 µg/mL
T/E ratio [g]	

[a] A urinary concentration of 11-nor-delta 9-tetrahydrocannabinol-9-carboxylic acid (carboxy-THC) greater than 15 ng/mL constitutes a doping violation and must be reported.

[b] Corrected for specific gravity of 1.020.

[c] The threshold concentration is based on the sum of the glucuronide conjugate and free drug concentrations.

[d] Morphine at a urinary concentration greater than 1 µg/mL constitutes a doping violation unless it may have been caused as a result of the administration of a permitted substance such as codeine. Laboratories should consider the presence of other substances that would provide evidence of the administration of codeine and related substances.

[e] Threshold corrected if specific gravity above 1.020.

[f] Salbutamol concentrations in urine greater than 1 µg/mL are defined as a doping violation. Concentrations greater than 100 ng/mL should be reported as an adverse finding relative to use of a β2 agonist.

[g] Refer to section S4-1b of the Prohibited List.

TAB 11

WADA Technical Document – TD2003LDOC

Document Number:	TD2003LDOC	Version Number:	1.3
Written by:	WADA Project Team	Approved by:	
Date:	June 5, 2003	Effective Date:	January 1, 2004

LABORATORY DOCUMENTATION PACKAGES

The required Documentation Packages shall be provided by the Laboratory whenever required by the *International Standard* for Laboratories or in support of an *Adverse Analytical Finding* challenged by an *Athlete*. The package will be comprised of the information listed below. Each page of the package shall be numbered sequentially and the package certified to be a true copy of the original data and forms. The items listed below do not constitute a list of required flow charts, forms or documents, but instead a list of information necessary to support the analytical result. Laboratory working documents, computer printouts, and similar documents may be in the native language of the laboratory personnel. Table of contents and any flowcharts explaining the sequence of steps in the process and any other explanatory portions of the Documentation Packages should be provided in English or French, if requested.

The items listed below shall be the only information the Laboratory is required to include in the Documentation Package. Therefore, the Laboratory is not required to support an *Adverse Analytical Finding* by producing standard operating procedures, general quality management documents (e.g., ISO compliance documents) or any other documents not specifically required below.

All Documentation Packages provided shall contain the following information:

- Table of Contents
- List of Laboratory Staff involved in the test, including signatures and/or initials and position title(s)
- *Sample* Collection Control Form (external chain of custody form)
- Documentation of shipping and receipt of intact *Sample*
- Documentation linking *Sample* Identification Number to Laboratory Identification Number
- "A" *Sample* Bottle Laboratory Internal Chain of Custody
- Urine Integrity test results (if completed)

- Screening Test Data
 - Screening Test Description
 - Screening Aliquot Laboratory Internal Chain of Custody documentation
 - Screening Test Results on negative, positive and athlete Aliquot
 - Documentation of any deviations from the written screening procedures, if any
 - Data run in the same analytical run or used to verify instrument performance or operation during that run.
 [For example, tuning data for the mass spectrometer; chromatographic performance verification samples, if any; and/or quality control data, if any. This does not refer to data generated at other times (e.g., validation data for the method)]
- "A" *Sample* Confirmation Procedure Data
 - Confirmation Procedure Description
 - Confirmation Aliquot Laboratory Internal Chain of Custody documentation
 - Confirmation Procedure Data on negative, positive and all *Athlete* Aliquot(s)
 - Quantitative Data or ratio data and uncertainty estimation, if applicable
 - Documentation of any deviations from the written confirmation procedures, if any *[For example, a change in the split ratio or a dilution of the derivatized sample due to sample overload in the GC/MS; application of an additional cleanup step; or an explanation for the re-analysis of the sample with a new aliquot.]*
 - Data run in the same analytical run or used to verify instrument performance or operation during that run.
 [For example, tuning data for the mass spectrometer; chromatographic performance verification samples, if any; and/or

quality control data, if any. This does not refer to data generated at other times (e.g., validation data for the method)]

- "A" *Sample* Certificate of Analysis or certified Test Report

- Documentation of identity of "B" *Sample* with information on opening procedure and signature of athlete, representative, or surrogate present at opening

- "B" *Sample* Bottle Laboratory Internal Chain of Custody

- "B" *Sample* Confirmation Procedure Data

 - Confirmation Procedure Description

 - Confirmation Aliquot Laboratory Internal Chain of Custody documentation

 - Confirmation Procedure Data on negative, positive and all *Athlete* Aliquot(s)

 - Data run in the same analytical run or used to verify instrument performance or operation during that run. *[For examples, see "A" sample section]*

 - Quantitative Data or ratio data and uncertainty estimation, if applicable

 - Documentation of any deviations from the written confirmation procedures, if any *[For examples, see "A" sample section]*

 - "B" *Sample* Certificate of Analysis or certified Test Report

TAB 12

WADA Technical Document – TD2003IDCR

Document Number:	TD2003IDCR	Version Number:	1.2
Written by:	WADA Project Team	Approved by:	
Date:	May 11, 2003	Effective Date:	January 1, 2004

IDENTIFICATION CRITERIA FOR QUALITATIVE ASSAYS INCORPORATING CHROMATOGRAPHY AND MASS SPECTROMETRY

The appropriate analytical characteristics must be documented for a particular assay. The Laboratory must establish criteria for identification of a compound. Examples of acceptable criteria are:

Chromatographic separation

For capillary gas chromatography, the retention time (RT) of the analyte shall not differ by more than one (1) percent or ±0.2 minutes (whichever is smaller) from that of the same substance in a spiked urine sample, Reference Collection sample, or Reference Material analyzed contemporaneously. In those cases where shifts in retention can be explained, for example by sample overload, the retention time criteria may be relaxed. For high performance liquid chromatography, the RT of the analyte shall not differ by more than two (2) percent or ±0.4 minutes (whichever is smaller) from that of the same substance in a spiked urine sample, Reference Collection sample, or Reference Material analyzed in the same analytical batch.

Mass Spectrometric Detection

Full scan mode: A full or partial **scan** is the preferred approach to identification. A partial **scan** may begin at an m/z value greater than any abundant ion due to the derivatizing agent or chemical ionization reagent.

When a full or partial **scan** is acquired, all **diagnostic ions** with a **relative abundance** greater than 10% in the reference spectrum obtained from a positive control urine, a Reference Collection sample, or a Reference Material must be present in the spectrum of the unknown peak. In addition, the **relative abundance** of three **diagnostic ions** shall not differ by more than the amount shown in Table 1 from the relative intensities of the same ions from that of a spiked urine, a Reference Collection sample, or a Reference Material. The **relative abundance** of the **diagnostic ions** may be obtained from single or averaged spectra or integration of peak areas of extracted ion profiles.

Background subtraction, if applied, should be performed uniformly on all *Samples* analyzed contemporaneously and used to make decisions regarding the presence of a *Prohibited Substance* or *Method*, its *Metabolite*, or *Marker*.

The use of computer-based mass spectral library searching or matching is permitted. The laboratory must establish criteria for acceptance of compound identification based on spectral match quality. Since the match factor of a reverse search does not guarantee identification, all spectral library matches must be reviewed by a qualified scientist.

If three **diagnostic ions** with a **relative abundance** greater than 5% are not available, a second derivative shall be prepared, or a second ionization or fragmentation technique shall be used. The second derivative should yield different

diagnostic ions. The second ionization technique must be based on a different physical principle, i.e., chemical ionization vs. electronic ionization and again should provide different diagnostic ions. It is not acceptable to utilize a technique that changes only the **relative abundance** of the same mass ions. In any case, a minimum of two **diagnostic ions** is mandatory in each mass spectrum.

Selected Ion Monitoring Mode: In some cases, it may be necessary to monitor selected ions in order to detect the substance at the Minimum Required Performance Limits. When selected ions are monitored, at least three **diagnostic ions** must be acquired. The **relative abundance** of a **diagnostic ion** shall preferably be determined from the peak area or height of integrated selected ion chromatograms. The **signal-to-noise ratio** of the least intense **diagnostic ion** must be greater than three to one (3:1). The relative intensities of any of the ions shall not differ by more than the amount in Table 1 from the relative intensities of the same ions acquired from a spiked urine, Reference Collection sample, or Reference Material. For a **diagnostic ion** with a **relative abundance** of less than 5% in the reference, the ion must be present in the unknown. The concentration of *Prohibited Substance*, or its *Metabolite*, or its *Marker* should be comparable in the *Sample* and the spiked urine, Reference Collection sample, or Reference Material.

Table 1

Maximum Tolerance Windows for Relative Ion Intensities

to Ensure Appropriate Uncertainty in Identification

Relative Abundance (% of base peak)	EI-GC/MS	CI-GC/MS; GC/MS^n; LC/MS ; LC/MS^n
> 50%	±10% (absolute)	± 15% (absolute)
25% to 50%	± 20% (relative)	±25% (relative)
< 25%	±5% (absolute)	±10% (absolute)

If the Laboratory protocol requires three ions to be within a tolerance window to identify a substance, it is not permissible to collect additional ions and select those ion ratios that are within tolerance and ignore others that would not result in meeting identification criteria without a valid explanation.

If three **diagnostic ions** are not available, a second derivative shall be prepared, or a second ionization or fragmentation technique shall be used. The second derivative should yield different **diagnostic ions**. The second ionization technique must be based on a different physical principle, i.e., chemical ionization vs. electronic ionization and again should provide different **diagnostic ions**. It is not acceptable to utilize a technique that changes only the **relative abundance** of the

same mass ions. In any case a minimum of two **diagnostic ions** must be present in each mass spectrum.

Tandem mass spectrometric (MS^n) detection:

Tandem mass spectrometry data can be acquired in either the full **scan** or selected reaction monitoring (SRM) mode. The combination of mass selection of the precursor ion followed by a potentially unique collision-induced dissociation and mass selection or scanning of the product ion gives **tandem mass spectrometry** increased specificity. Collision conditions should be selected to ensure that the precursor ion is present in the **MS/MS scan** or SRM acquisition. In some cases, the combination of a single precursor-product ion pair may be sufficiently unique to be definitive. When monitoring one precursor ion to yield one product ion, the mass resolution of the first mass analyzer should be set to unity. When monitoring more than one product ion, the relative intensities of any of the ions shall not differ by more than the amount in Table 1 from the relative intensities of the same ions acquired from a spiked urine, Reference Collection sample, or Reference Material analyzed contemporaneously. The **signal-to-noise** of the least intense **diagnostic ion** must be greater than three-to-one (3:1). The **relative abundance** of a diagnostic ion shall preferably be determined from the peak area or height of integrated selected ion chromatograms. For a diagnostic ion with a **relative abundance** of less than 5% in the reference, the ion must be present in the unknown.

If unique **diagnostic** product **ion(s)** are not available, a second derivative shall be prepared, or a second ionization or fragmentation technique shall be used. The second derivative should yield different precursor and/or product ions. The second ionization technique may use a different chemical ionization reagent, but should provide different precursor or product ions. It is not acceptable to utilize a technique that changes only the relative abundance of the same mass ions.

Estimation of concentration

The concentration may be estimated by any of the above techniques by taking the ratio of the peak height (or peak area) obtained at the retention time for the analyte of interest compared to that obtained from an internal standard. An appropriately deuterated internal standard is preferred but not required. The peak height (or peak area) ratio may then be compared to a standard or positive control urine. The use of a single ion at the appropriate mass-to-charge ratio (e.g. m/z 405 for 19-norandrosterone di-TMS derivative) taken from an extracted ion chromatogram or from a selected ion monitoring chromatogram is sufficient for the estimation of concentration. Additional ions must be used for meeting identification criteria.

Definitions

Diagnostic ion(s): Molecular ion or fragment ions whose presence and abundance are characteristic of the substance and thereby may assist in its identification. A second ion belonging to the same isotopic cluster may also be used as diagnostic only when the peculiarity of the atomic composition of the fragment so justifies (e.g. presence of Cl, Br, or other elements with abundant isotopic ions).

High resolution mass spectrometry (HRMS): For the purposes of the *International Standards* for Laboratories, HRMS is defined as mass spectrometry at a resolving power (10 % valley definition) in excess of 3,000.

Low resolution mass spectrometry (LRMS): LRMS is defined as mass spectrometry at a resolving power (10 % valley definition) lower than 3,000.

Relative abundance (mass spectrometry): The abundance of a particular ion relative to the most abundant ion monitored expressed as a percentage.

> **Maximum difference in relative abundance**: The maximum permitted difference between the relative abundance of a particular ion obtained from the *Sample* and that obtained from the positive control urine. This may be expressed in ABSOLUTE or RELATIVE terms.
>
> > **Absolute difference**: Calculated by subtracting the stated percentage from the relative abundance obtained for the studied ion from the positive control urine or Reference Material. For example, if the relative abundance of an ion in the chromatographic peak of interest in the positive control urine or Reference Material is measured as 20%, then the observed relative abundance for the same ion in the peak of interest in the unknown urine sample would be required to be in the range of 15-25% (20% ± 5%) for the ion to contribute to an acceptable identification.
> >
> > **Relative difference**: Calculated by multiplying the stated percentage by the relative abundance obtained for the studied ion from the positive control urine or Reference Material. For example, if the relative abundance of an ion in the chromatographic peak of interest in the positive control urine or Reference Material appears as 30 % and the stated maximum permitted difference is 20 % (relative), then the observed relative abundance for the same ion in the peak of interest in the unknown urine sample would be required to be in the range of 24-36% (30% ± (30 x 20 %)) for the ion to contribute to an acceptable identification.

Scan: Acquisition of ions of a continuous range of m/z values.

Selected ion monitoring (SIM): Acquisition of ions of one or more pre-determined discrete m/z values for specified dwell times.

Signal-to-Noise Ratio: Magnitude of the instrument response to the analyte (signal) relative to the magnitude of the background (noise).

Tandem mass spectrometry (MS/MS or MS^n): A technique in which a precursor ion is isolated in a mass analyzer, fragmented by collision with a collision gas, and the product ions collected in a second mass analyzer. This process can be applied multiple times, each application being reflected in the "n" exponent. The technique may be accomplished either in space (e.g. triple quadrupole MS) or in time (e.g. ion trap MS)

TAB 13

AMERICAN ARBITRATION ASSOCIATION
North American Court of Arbitration for Sport Panel

In the Matter of the Arbitration between

United States Anti-Doping Agency, Claimant
and
George Hartman, Respondent
Re: 30 190 00900 05

AWARD OF ARBITRATORS

WE, THE UNDERSIGNED ARBITRATORS ("Panel"), having been designated by the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties, and, after hearings held on May 3, May 4 and May 5, 2006, do hereby render its full award pursuant to its undertaking to do so by June 19, 2006.

1. Summary

Respondent tested positive for testosterone in a March 2, 2005 Out-of-Competition drug test. He admits being administered testosterone, but argues that his testosterone treatment was medically necessary as a result of his disability.[1] Respondent requested that his two-year period of ineligibility be reduced under the Exceptional Circumstances provision of the World Anti-Doping Code ("Code") Article 10.5. In addition, Respondent requested protection under the Americans with Disability Act ("ADA"). For the reasons explained below, the Panel finds that Respondent failed to sustain his burden of proof that he suffers from a disability. As a consequence, the Panel imposes a two-year period of ineligibility, along with other sanctions as required by the Code.

[1] For privacy reasons, the Panel will not identify the symptoms or alleged disability.

2. Parties

2.1 Claimant, USADA, is the independent anti-doping agency for Olympic Sports in the United States and is responsible for conducting drug testing and any adjudication of positive test results pursuant to the United States Anti-Doping Agency Protocol for Olympic Movement Testing, Effective as Revised August 13, 2004 ("USADA Protocol").

2.2 The Respondent, George Hartman, is a member of the United States Judo Association ("USA Judo").[2] In 2005, Respondent was ranked number two in the United States under the 100kg weight category. Respondent has been in the USADA's Out-of-Competition testing pool since November of 2004.

3. Jurisdiction

3.1 This Panel has jurisdiction over this doping dispute pursuant to the Ted Stevens Olympic and Amateur Sports Act ("Act") §220521 because this is a controversy involving Respondent's opportunity to participate in national and international competition for his NGB. The Act states:

> **An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . any aggrieved amateur athlete. . ., conducted in accordance with *the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation's constitution and bylaws.*.** .(emphasis added)

Ted Stevens Olympic and Amateur Sports Act § 220521.

[2] USA Judo is a National Governing Body ("NGB") as defined by the Ted Stevens Olympic and Amateur Sports Act (the "Act").

3.2 Under its authority to recognize an NGB[3], the United States Olympic Committee ("USOC") established National Anti-Doping Policies, effective August 13, 2004 ("USOC Policies"), which provide:

> **. . .NGBs shall not have any anti-doping rule which is inconsistent with these policies or the USADA Protocol, and NGB compliance with these policies and the USADA Protocol shall be a condition of USOC funding and recognition.**

National Anti-Doping Policies, ¶13.

3.3 Regarding athletes, the USOC Policies provide:

> **. . .By virtue of their membership in an NGB or participation in a competition organized or sanctioned by an NGB, Participants agree to be bound by the USOC National Anti-Doping Policies and the USADA Protocol.**

National Anti-Doping Policies, ¶12.

3.4 In compliance with the Act, the USADA Protocol, Article 10 (b), provides that hearings regarding doping disputes "will take place in the United States before the American Arbitration Association ("AAA") using the supplementary Procedures."[4]

4. Background and Procedural Facts.

4.1 On March 2, 2005, as part of an out-of-competition drug test Respondent provided a urine sample #485340 ("Sample") at the request of a USADA Doping Control Officer. The UCLA accredited laboratory ("UCLA Lab"), which conducted the test, received the Sample on March 4, 2005. On March 9, 2005, the laboratory performed a screening test on the Sample. The screening test indicated the Sample was negative for any prohibited substance under the Code. On March 28, 2005, Claimant sent a letter to Respondent informing him of this negative test.

[3] Act, §220505(c)(4).

[4] The supplementary procedures refer to the American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes, as approved by the USOC's Athletes' Advisory and NGB Councils.

4.2 However, as a result of the low epitestosterone levels in the Sample, on March 30, 2005 the UCLA Lab conducted additional testing with Carbon Isotope Ratio ("CIR"). Using this method, the Sample tested positive for Testosterone. Thereafter, On May 5, 2005, Claimant informed Respondent of this positive test.

4.3 On May 7, 2005, Respondent requested that the B Sample be analyzed. On June 3, 2005, Claimant reported that the B Sample test confirmed the positive A Sample.

4.4 On July 12, 2005, the USADA Anti-Doping Review Board ("Board") recommended, among other things, a minimum two-year suspension from the date Respondent accepted the sanction. The Board's recommendation also provided that all of Respondent's competitive results would be cancelled retroactive to March 2, 2005.

4.5 Respondent was also advised of his right to contest the sanction proposed by Claimant by requesting a hearing before a panel of North American Court of Arbitration for Sport ("CAS") arbitrators who are also American Arbitration Association ("AAA") arbitrators in accordance with the USADA Protocol. Respondent advised Claimant of his election to proceed to arbitration, and by letter dated July 29, 2005, Claimant formally initiated this arbitration.

4.6 On August 23, 2005 Respondent became eligible to participate, and accepted a position to compete as part of USA Judo's team, at the 24th World Judo Championships held in Cairo, Egypt, starting September 8, 2005. As a result, Claimant requested an expedited hearing under USADA Protocol, R-7. Arbitrator Carolyn Witherspoon presided over the expedited hearing and ordered that the substantive hearing be conducted no later than August 31, 2005.

4.7 On August 26, 2005 the Panel conducted its first, of many, telephonic preliminary hearing with Mr. Tygart and Respondent. Respondent was not represented by counsel because he could not afford one. Given the complicated nature of these proceedings, the Panel urged Respondent to seek the assistance of the USOC Athletes Ombudsman to obtain an attorney that

could represent him on a pro bono basis. The Panel also inquired why Respondent had not accepted a provisional suspension.

4.8 On August 28, 2005, Respondent accepted a provisional suspension. In addition, Respondent informed the Panel that the Athletes Ombudsman was attempting to locate counsel for him. For these reasons, the Panel vacated the August 31, 2005 hearing date.

4.9 On September 9, 2005, Respondent informed the Panel that the Athletes Ombudsman had located an attorney that would represent him on a pro bono basis. Mr. Michael Straubel of Valparaiso University Law School had agreed to represent Respondent as part of the Law School's Sports Law Clinic program. Mr. Straubel is the Director of the Valparaiso Sports Law Clinic.[5] Thereafter, a second preliminary hearing was scheduled for September 12, 2005.

4.10 After the September 12, 2005 preliminary hearing, the Panel ordered the following: (1) the parties were to keep the Panel updated on the status of the Therapeutic Use Exemption ("TUE") application, (2) by October 3, 2005, the Respondent was to advise Claimant whether he would raise the ADA as a defense[6], and (3) witness lists, exhibits and briefs were to be filed by Respondent on October 14, 2005 and by Claimant on October 28, 2005. The hearing was reschedule for November 14 & 15, 2005.

4.11 Respondent's counsel requested that the November 14 & 15, 2005 hearing date be vacated because the TUE process was taking longer than he had anticipated. He wanted that process completed before the hearing. Claimant did not object. Therefore, the briefing schedule and hearing date was vacated.

4.12 On December 20, 2005, David Askinas (a Panel member) recused himself from the Panel because he had accepted the position of Executive Director of an NGB. Margery F.

[5] This Clinic provides pro bono legal services for Olympic athletes who cannot otherwise afford legal representation. Mr. Anthony Calando and Mr. Stephen Starks were the Valparaiso students representing Respondent in this proceeding.

[6] Respondent advised Claimant of the ADA defense on a timely basis.

Gootnick was named in his place. Thereafter, through a series of preliminary hearings[7], the hearing was set for May 3 through May 5, 2006 in Mesa, Arizona. The parties stipulated to a briefing schedule.

4.13 On January 30, 2006, Respondent filed his pre-trial brief, which contained an ADA defense. On February 15, 2006, Claimant filed a motion to dismiss Respondent's ADA defense for lack of jurisdiction. Claimant supplemented this Motion on March 1, 2006. Claimant's motion and supplemental motion requested that the Panel rule on whether it had jurisdiction over Respondent's defense before the evidentiary hearing scheduled to start May 3, 2006. On March 3, 2006, Respondent filed a "Motion to Join USOC and clarify USA Judo as a party." After the Panel reached its decision regarding the ADA jurisdictional issue, it received Respondent's Motion to Dismiss USADA's Lack of Jurisdiction Motion on Timeliness Grounds.

4.14 On March 10, 2006, the Panel held it would not rule on Claimant's motion to dismiss Respondent's ADA defense until Respondent "had an opportunity (through a full evidentiary hearing) to establish that he had a disability that would enable him to seek relief under the World Anti-Doping Code ("Code"), Article 10.5." The Panel informed the parties that it would use "the ADA's definition of a disability and controlling case law in its Article 10.5 analysis." It was the Panel's view that there was no reason to decide the ADA jurisdictional issue, as a case of first impression, if Respondent could not sustain his burden of proof that he had a disability under the Panel's Article 10.5 analysis.

4.15 The Panel also denied, without prejudice, Respondent's motion to implead and join the USOC and USA Judo. The Panel informed Respondent that if it found that he had a disability and justice required; it would entertain Respondent's motion to join USA Judo and the USOC, organize a briefing schedule, and establish hearing dates.

[7] The Panel had scheduled the hearing dates for March 7 through March 8 in Phoenix, Arizona. At the request of the Respondent, this hearing date was likewise vacated.

4.16 From reviewing parties' initial briefs, it was apparent the Panel's decision would be largely influenced by the testimony of expert witnesses. As a consequence, the Panel determined it was appropriate to obtain evidence from an independent medical expert on the question of Respondent's disability (pursuant to its authority to do so under the Supplementary Procedures for the Arbitration of Olympic Sport Doping Dispute, R-45(e)) because: (a) this testimony would involve complicated, conflicting medical and scientific arguments; (b) the athlete was asserting a disability, a significant issue in the Olympic movement;[8] (c) Respondent's ADA defense was a case of first impression for an AAA panel; (d) the Respondent could not afford an attorney and therefore would certainly not be able to afford any expert witness other than his own doctor; and (d) the Panel felt obligated to ascertain the truth of the matter.[9]

4.17 The Panel requested the parties input regarding the selection of the independent medical expert. Over the objection of Claimant[10], the Panel eventually retained the services of Dr. Roger E. Johnsonbaugh, an endocrinologist practicing in Phoenix, Arizona. The Panel requested, but emphasized that it did not order, that Respondent submit to an Independent Medical Exam ("IME") by Dr. Roger E. Johnsonbaugh. Respondent submitted to the IME, and Dr. Johnsonbaugh's report was provided to the parties the day before the hearing, on May 2, 2006.

5. Stipulations

The parties stipulated to the following:

1. That the USADA Protocol for Olympic Movement Testing governs the hearing for an alleged doping offense involving USADA specimen number 485340;

2. That the mandatory provisions of the World Anti-Doping Code ("WADA Code") including, but not limited to, the definitions of doping, burdens of proof,

[8] Under the Act, §220503, the USOC is required to encourage and provide assistance for athletes with disabilities and §2205524(7) requires the NGBs to encourage participation by individuals with disabilities.
[9] Other AAA panels have used the services of independent medical experts when faced with conflicting expert testimony. *See* USADA v. Vencil, AAA No. 30 190 00291 03 (July 30, 2003).
[10] USADA argued that the panel did not have the authority to hire an independent medical expert. Further, USADA argued that the panel should not hire an expert that would prove Respondent's case.

Classes of Prohibited Substances and Prohibited Methods, sanctions and the international Standard for Therapeutic Use Exemptions, and contained in USADA Protocol at Annex A are applicable to this hearing for the doping offense involving USADA specimen number 485340;

3. That Mr. Hartman gave the urine sample designated as USADA specimen number 485340 on March 2, 2005, as part of the USADA Out-of-Competition testing program;

4. That each aspect of the sample collection and processing for the A and B bottles of USADA specimen number 485340 was conducted appropriately and without error;

5. That the chain of custody for USADA specimen number 485340 from the time of collection and processing at the collection site to the receipt of the sample by the World Anti-Doping Agency accredited laboratory at the University of California in Los Angeles ("UCLA Laboratory") was conducted appropriately and without error;

6. That the UCLA Laboratory's chain of custody for USADA specimen number 485340 was conducted appropriately and without error;

7. That the UCLA Laboratory, through accepted scientific procedures and without error, determined the sample positive for the administration of exogenous testosterone or its precursors in both the A and B bottles of USADA specimen number 485340;

8. That on August 25, 2005, Mr. Hartman submitted an application for a Therapeutic Use Exemption ("TUE") to USADA for the use of Testosterone Cypionate in the treatment [of his alleged medical condition];

9. That Mr. Hartman agreed to provide USADA with copies of any and all documents submitted by him to the International Judo Federation ("IJF") concerning his TUE application and to copy USADA on any and all correspondence between Mr. Hartman and the IJF regarding his application for a TUE;

10. That Mr. Hartman agreed that the presence of exogenous testosterone or its precursors in both the A and B bottles of USADA specimen number 485340 is a first doping offense;

11. That the Parties agreed the period of ineligibility will be a maximum of two (2) years beginning on the date of the hearing panel's decision with credit being given for the time Mr. Hartman has served a provisional suspension beginning on March 28, 2005, to a minimum of one (1) year beginning on the date of the hearing panel's decision with credit being given for the time Mr. Hartman has served a provisional suspension beginning on March 28, 2005;

12. That Mr. Hartman reserved his right to argue applicable defenses only for the purposes of seeking a reduction in the two-year period of ineligibility under the applicable rules;

13. That Mr. Hartman will be disqualified from and forfeits any and all competitive results, if any, received subsequent to March 2, 2005, the date that USADA specimen number 485340 was collected. . .

6. Parties Arguments

6.1 Respondent makes several arguments. First, that he is disabled under the ADA and that Claimant and USA Judo have discriminated against him on the basis of his disability. Second, that §504 of the Rehabilitation Act should preclude both Claimant and USA Judo from discriminating against him because they are entities which receive federal government funding. Third, there are Exceptional Circumstances which explain and justify Respondent's inability to apply for a TUE. Fourth, Respondent was taking testosterone injections as a medical necessity. Fifth, Respondent's injection of testosterone were not performance enhancing. They only brought him back to levels slightly below those of a normal male.

6.2 Respondent supported his arguments with the testimony of the following witnesses: (1) Alexandra Hartman, Respondent's wife; (2) Jeffrey Sitzler, Respondent's training partner; (3) Dr. Walter Van Helder, Respondent's treating physician; and (4) Respondent. The Panel found the testimony of Respondent's witnesses to be credible, with the exception of the testimony of Dr. Van Helder and certain aspects of Respondent's testimony.

6.3 Claimant refutes Respondent's arguments. First, Claimant argues that Respondent's disability discrimination claims fail as a matter of law because the claims are not arbitrable under the arbitration agreement, the USADA Protocol for Olympic Movement Testing. Second, the ADA does not apply to Claimant in this proceeding under Title I, II, and III or under the Rehabilitation Act. Third, the ADA does not create an exemption for athletes in Respondent's circumstances to use prohibited steroids. Fourth, even if such an exemption could be created it would be inappropriate for the Panel to do so in this arbitration. Fifth, Respondent

has failed to establish that he is disabled and needs testosterone for any legitimate medical reasons. He has not submitted credible medical evidence that he has an "impairment which substantially limits a major life activity", the ADA standard. Sixth, that Respondent's failure to apply for a TUE during the two-year period he was taking testosterone eliminates any possibility of a reduction in the period of ineligibility that should be imposed. Claimant alleges that the TUE process is entirely consistent with the ADA and Respondent's failure to follow it eliminates any legitimate ADA claim as well as any claims that Exceptional Circumstances exist. Seventh, even if Respondent has a disability recognized by the ADA, he is unable to establish that the administration of testosterone is a reasonable and necessary medical treatment under the circumstances. Finally, even if Respondent has a disability and establishes that the administration of testosterone by his doctor is reasonable and necessary, this accommodation if granted by the Panel would fundamentally alter the nature of the sport of judo and would jeopardize the health and safety of other competitors.

6.4 Claimant supported its arguments with the testimony of the following witnesses: (1) Dr. Richard Auchus, an associate processor of endocrinology and metabolism and internal medicine at the University of Texas, Southwestern Medical Center at Dallas; and (2) Dr. Harrison J. Pope, a professor of psychiatry on the faculty of Harvard Medical School in Boston and director of biological psychiatry laboratory at McLean Hospital. The Panel found the testimony of Claimant's expert witnesses (together with the testimony of the Panel's independent expert, Dr. Johnsonbaugh) to be credible and controlling in this matter.

7. Disability Analysis

7.1 Under the WADA Code International Standard, Anabolic Agents, including testosterone, are listed as substances and methods prohibited at all times (in-and out-of-competition). In stipulation number 10, Respondent concedes that he has committed a first

doping offense under Article 2 of the Code as a result of taking testosterone. Article 2 of the Code provides:

> **The following constitute anti-doping rule violations:**
> **2.1 The presence of a Prohibited Substance or its *Metabolites* or *Markers* in an *Athlete's* bodily Specimen.**
> **2.1.1 It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body. Athletes are responsible for any Prohibited Substance or its *Metabolites* or *Markers* found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the *Athlete's* part be demonstrated in order to establish an anti-doping violation under Article 2.1.**

Code, Article 2.

> 7.2 Sanctions for Article 2 violations are provided for in Article 10:
>
> **. . . The period of Ineligibility imposed for a violation of Articles 2.1 . . .**
> • **First violation: Two (2) years' Ineligibility. . .**
> **However, the Athlete or other person shall have the opportunity in each case, before a period of Ineligibility is imposed, to establish the basis for eliminating or reducing this sanction as provided in Article 10.5.**

Code, Article 10.2.

> Article 10.5.2 allows the Respondent to argue for a reduction in his sanction, it provides:
>
> **. . . If an *Athlete* establishes in an individual case involving such violations that he or she bears *No Significant Fault or Negligence*, then the period of *Ineligibility* may not be less than one-half of the minimum period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this section may be no less than 8 years. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's* Specimen in violation of Article 2.1 (Presence of Prohibited Substance), the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* reduced.**

Code, Article 10.5.2.

> Respondent's standard of proof is provided in Article 3 of the code:
>
> **3.1 Burdens and Standards of Proof.**
> **. . .Where the *Code* places the burden of proof upon the *Athlete* or other *Person* alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.**

Code, Article 3.1.

7.3 Once you parse through all the medical arguments in this case, it is clear that Respondent argues that he suffers from a disability caused by a head trauma that somehow interferes with the Respondent's pituitary gland producing the luteinizing hormone (LH) (the hormone required for the production of testosterone).[11] He contends this disability allows the Panel to reduce his period of ineligibility under Article 10.5.2 and the ADA.[12]

7.4 Respondent's physician and expert witness, Dr. VanHelder, testified that the 2003 blood test that showed his level of testosterone at 256 ng/dL confirms that he suffers from this pituitary gland problem.[13] In rebutting that testimony, Dr. Auchus testified that while it was acceptable to screen patients with a random total testosterone level for the symptoms Respondent was exhibiting (the only diagnostic test employed by Dr. VanHelder), it was improper to confirm a diagnosis of Respondent's alleged disability with only one random blood test.[14] Dr. Auchus' view was supported by the Panel's independent medical expert, Dr. Johnsonbaugh.[15]

7.5 Dr. Van Helder's diagnosis was flawed because he failed to do confirmatory tests which include morning measurements of total testosterone, initial measurements of LH (as noted above), FSH and prolactin, and an assessment of free testosterone. [16] These confirmatory tests were necessary, in part, because testosterone levels are not consistent during the day.[17] There is a strong diurnal rhythm and pulsality. Both of which factors influence testosterone levels.[18] Due to the phenomenon of pulsality, testosterone concentrations taken only 20 minutes apart can have about a twenty percent (20%) difference.[19]

[11] Transcript of Proceedings, *USADA vs. George Hartman* AAA No. 30 190 00900 05, Mesa, Arizona, ("Transcript"), pp. 222, 292 (May 3, 2006 through, May 5, 2005).
[12] Article 10.5 allows for the elimination of the period of ineligibility in 10.5.1, *No Fault or Negligence.* The parties have stipulated (number 11) that this provision does not apply as Respondent will serve at minimum a one year period of ineligibility.
[13] Transcript, p. 237-238.
[14] Transcript, p. 481-494
[15] Panel Exhibit 1, ¶9.; Transcript, p. 194.
[16] Transcript, pp. 490-494.
[17] Transcript, pp. 482-483.
[18] Transcript, pp. 483; 540-541.
[19] Transcript, pp. 485-486; 540.

7.6 Dr. Auchus testified that because of the existence of a diurnal rhythm, testosterone levels are properly measured in the morning.[20] The single testosterone concentration measurement relied upon by Dr. VanHelder was taken in the afternoon.[21] The variability in random testosterone concentrations caused by diurnal rhythm varies even "more than" 20%. There can be "a much greater change" when dealing with measurements taken hours apart.[22] "[F]or the vast majority of young people, there is a considerable difference between the morning levels and the afternoon levels."[23] "[V]alues as low as 100 in the afternoon are seen in people who have values as high as 500 in the morning."[24] Therefore, there is no reasonable scientific basis upon which Respondent's single testosterone concentration measurement in the afternoon of May, 2003 can be considered low. Not only was it within the normal range of values; but, due to variability caused by diurnal rhythm and pulsality, Respondent could have had registered values higher than 500 on that same day.[25] Because the appropriate tests were not undertaken Respondent's precise range cannot be known, and there is no basis for a conclusion that Respondent's testosterone levels fell below the normal range. The Panel's independent medical expert confirmed Dr. Auchus' conclusions, Dr. Johnsonbaugh stated: "I think he gave testosterone to a patient who had a normal testosterone level."[26]

7.7 In addition, Dr. Auchus testified that confirmatory testing of free testosterone levels (which Dr. VanHelder did not do as part of his diagnostic work up) is necessary because "the amount of . . . hormone binding globulin, varies from person to person."[27] "[M]ost people who have a low normal level of total testosterone . . . have low levels of this binding protein, so . . . they don't need as much total testosterone to generate . . . a normal amount of the biologically

[20] Transcript, pp. 483-484.
[21] *Id.*
[22] Transcript, pp. 486-487; 538.
[23] Transcript, p. 540.
[24] Transcript, p. 538.
[25] Transcript, p. 538.
[26] Panel Exhibit 1, final paragraph.
[27] Transcript, p. 491.

active free testosterone."[28] "So if Dr. Van Helder had any question about whether the total testosterone was normal or not, it's imperative to measure the free testosterone by an accurate method."[29] Dr. VanHelder improperly failed to measure free testosterone before reaching his diagnosis.[30] Moreover, even two years after his diagnosis when he first attempted to measure free testosterone he failed to use an accurate measuring technique. [31]

7.8 Furthermore, the very evidence produced by Dr. VanHelder demonstrated that in 2005 Respondent's pituitary gland was functioning normally with respect to the production of Growth hormone, Prolactin, TSH and Cortisol.[32] In other words, all the hormones produced by the pituitary gland were functioning within normal ranges with the exception of those that would have been suppressed by the exogenous administration of testosterone (luteinizing hormone (LH) and FSH).

7.9 To refute this conclusion, Dr. Van Helder testified a head injury could cause the selective reduction of the LH harmones in the pituitary gland.[33] Dr. Van Helder stated: "There is something which is preventing the cells which secrete LH. . . to secrete those hormones properly, and I don't know what that something is. I believe it's a repetitive trauma. I have no way to know or not to know." Respondent submitted no medical evidence showing a head injury occurred, and Respondent's medical records were devoid of any references to a head injury. Given the above, the Panel finds Dr. Van Helder's head-trauma theory speculative.

7.10 The more likely explanation is that the pituitary gland is functioning normally and the two-year exogenous, administration of testosterone has suppressed the LH production in a normal functioning pituitary gland.[34]

[28] *Id.*
[29] *Id.*
[30] Transcript, p. 492.
[31] *Id.*
[32] Transcript, p. 254, 292.
[33] Transcript, p. 258.
[34] Panel Exhibit 1, ¶9; Transcript, pp. 498-502

7.11 Moreover, the value of 0.0 of LH found in Respondent's September, 2005, blood test is almost certainly reflective of suppression due to his exogenous testosterone use because even if the pituitary were not functioning properly it would probably still secrete some testosterone; "about the only thing that can cause [the complete absence of LH] is exogenous administration of androgens or estrogens."[35]

7.12 For the reasons stated above, the Panel finds that Respondent failed to sustain his burden of proof that he suffers from "a physical or mental impairment that substantially limits one or more of the major life activities" (i.e., he has a disability) that would allow him to seek a reduction in his period of ineligibility under Article 10.5.2 of the Code. Moreover, as Respondent has failed to sustain his burden of proof on this issue, it is not necessary or appropriate for the Panel to consider the parties arguments regarding the ADA.

8. Medical Treatment Analysis

8.1 While Respondent does not satisfy the Exceptional Circumstances test under 10.5.2 on the basis of a disability, he can still argue for a reduction of his period of ineligibility on the grounds that he was obtaining legitimate medical treatment for his symptoms. In WADA v/ Lund (CAS OG 06/001), the athlete was taking hair replacement medicine. In that case, the panel actually gave the athlete less than a one-year suspension by starting the period of ineligibility from the time of the test, not the hearing. In Squizzato v/ FINA (CAS 2005/A/830), the athlete tested positive for trace amounts of steroids as a result taking a foot fungus medication. Her two-year period of ineligibility was reduced to a one-year suspension under Article 10.5.2. In Vlasov v/ATP (CAS 2005/A/873), the athlete sought legitimate medical treatment for depression. As a result of this medical treatment, he tested positive for a stimulant, Pemoline. His two-year period of ineligibility was likewise reduced to one year.

[35] Transcript, p. 507.

8.2 The Panel accepted as true Respondent's testimony that he was suffering from symptoms that led him to seek medical treatment. In addition, Respondent responsibly and appropriately sought the assistance of a doctor, Dr. Van Helder, who had a sports medicine background.[36] Indeed, given Respondent's stated symptoms, Dr. Auchus confirmed that Respondent's initial treatment of testosterone on July 21, 2003 was medically and scientifically appropriate.[37] This was not true for the additional treatments starting on August 18, 2003.

8.3 Nevertheless, the Panel is unwilling to reduce Respondent's period of ineligibility on the facts of this case for the following reasons:

8.3.1 Contrary to Respondent's assertions, the systematic administration of testosterone is an accepted ergogenic aid, "clearly increase[ing] strength" in a "dose response relationship.[38] In fact, testosterone can possibly be strength enhancing "even in doses that would be considered physiologic" for persons suffering from the disability Respondent claims he has.[39] Respondent thus had an unfair advantage in competing against other Judo Players from 2003 onward.

8.3.2 Dr. Van Helder claimed that even with the testosterone injections Respondent's testosterone "level really never came anywhere close to an average person. . . at any time whenever we treated him."[40]This assertion was flatly inconsistent with the testimony of Dr. Auchus that it is well established that a 300 milligram shot of testosterone will raise blood levels of testosterone above 2,000 ng/dl and that blood levels "are well above normal for at least three days."[41]

8.3.3 The gaps in Dr. Van Helder's administration of testosterone coincided with major Judo competitions. In other words, Respondent went off of his injections at least thirty days prior to major competitions.

[36] Transcript, p. 201. Dr. Van Helder testified his second specialty was sports medicine.
[37] Transcript, p. 554.
[38] Transcript, p. 549.
[39] Transcript, p. 550.
[40] Transcript, p. 245.
[41] Transcript, pp. 501-504.

8.3.4 Dr. Van Helder has been a Judo coach in the Olympic movement for decades.[42] He claims a specialty in sports medicine (treating professional and amateur athletes[43]). He talked about following the Ben Johnson case, and understanding that Ben Johnson was caught because he failed to come off of his steroid treatments within the appropriate amount of time. One of the most incredible statements Dr. Van Helder made was that he did not know that the use of testosterone under a doctor's care could cause an athlete to test positive.[44] He testified that he did not realize that testosterone was a banned substance in the Olympics or Major League Baseball.[45] How could anyone interested in sport, living in America, and having a sports medicine background make such outlandish claims.

8.3.5 Respondent repeatedly testified that he was taking testosterone as part of his legitimate medical treatment. It was his medicine, not a performance enhancing drug. The Panel believes that, arguably, this is what Dr. Van Helder told Respondent. If true, Respondent's testimony is eerily consistent with athletes who were unwittingly doped as part of state-sponsored doping programs in Germany and China.[46]

8.3.6 Testosterone is not some obscure drug on the Code's ban substance list. Regardless of what Dr. Van Helder told Respondent, Respondent either knew or was responsible for knowing that the administration of testosterone is prohibited by the Code.

8.3.7 To allow Respondent a reduction in his period of ineligibility on the facts of this case would seriously undermine the fight against doping in sport. The behavior exhibited by Dr. Van Helder and Respondent in this case cannot be tolerated.

[42] He was a Judo coach for the Russian National Judo team and also was Respondent's coach at various times.
[43] He testified he was the physician for the Chicago Cubs during their winter training in Arizona. Transcript, p. 206.
[44] Transcript, pp. 466-467.
[45] Transcript, p. 467.
[46] See *For Power and Glory: State-Sponsored Doping and Athletes' Human Rights,* Sports Lawyers Journal, Volume 13, p. 1 (Spring 2006).

9. Provisional Suspension

9.1 At the hearing, Claimant disclosed that Respondent had competed in a local Judo tournament on November 5, 2005. However, Claimant did not argue that Respondent had breached the Provisional Suspension Agreement and some additional sanction was appropriate.

9.2 The parties agreed that Claimant would file written submissions on this issue by May 11, 2006 and Respondent would respond by May 24, 2006. Neither party made written submissions by their deadlines. Further, neither party requested an extension before the expiration of their deadline. However, on June 7, 2006, Claimant sent the Panel a letter from USA Judo stating that they sponsored the local tournament and it was covered by the Provisional Suspension Agreement.

9.3 Because the Claimant has not requested any additional sanctions be imposed regarding this issue or modifications to the agreed stipulations, the Panel will not adjust the beginning period of ineligibility stipulated to by the parties.

10 Decision and Award

On the basis of the foregoing facts and legal aspects, this Panel renders the following decision:

10.1 Respondent has committed his first doping offense under the WADA Code, Article 2.

10.2 The following sanctions shall be imposed on Respondent:

10.2.1 A two-year period of ineligibility commencing August 28, 2005 through August 28, 2007, including his ineligibility from participating in U.S. Olympic, Pan American or Paralympic Games, trials or qualifying events, being a member of any U.S. Olympic, Pan American or Paralympic Games team and having access to the training facilities of the United States Olympic Committee Training Centers or other programs and activities of the USOC

including, but not limited to, grants, awards, or employment pursuant to the USOC Anti-Doping Policies;

10.2.2 The retroactive cancellation of all competition results and awards occurring after August 18, 2003 and the date of this Award.

10. 3 The administrative fees and expenses of the American Arbitration Association totaling $750.00 shall be borne entirely by the United States Olympic Committee, and the compensation and expenses of the arbitrators and expert witness totaling $62, 770.87 shall be borne entirely by the United States Olympic Committee.

10.4 This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

10.5 This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

6/19/06
Date

Christopher L. Campbell, Chairman

Date

Allen Rosenberg, Arbitrator

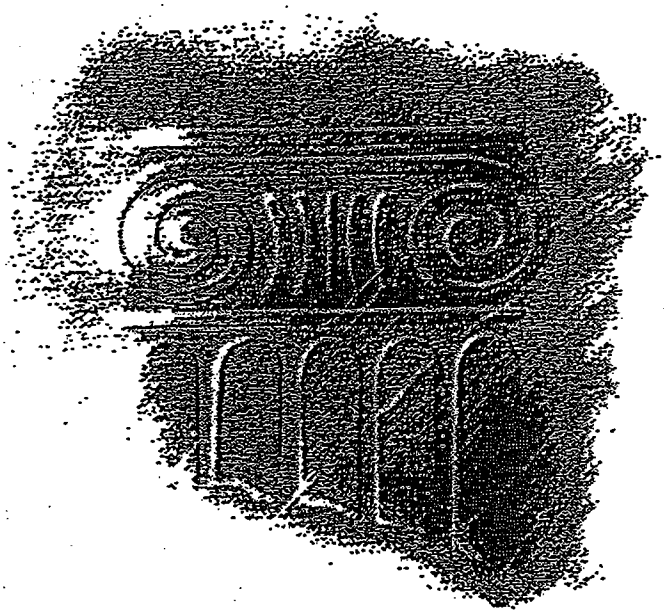
Date

Margary Gootnick, Arbitrator

TAB 14

Tribunal Arbitral du Sport

Court of Arbitration for Sport



ARBITRAL AWARD

Mrs. Viviana SUSIN, Rome Italy

v/

FEDERATION INTERNATIONALE DE NATATION AMATEUR (FINA), Lausanne, Switzerland



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2000/A/274 Susin v. FINA

ARBITRAL AWARD

rendered by

THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. L. Yves Fortier, C.C., Q.C., Barrister & Solicitor, Montreal, Canada

Arbitrators: Prof. Massimo Coccia, Attorney-at-Law, Rome, Italy
Mr. Denis Oswald, Attorney-at-Law, Neuchatel, Switzerland

Ad hoc Clerk: Mr. David P. Roney, Barrister & Solicitor, Geneva, Switzerland

IN THE PROCEDURE

BETWEEN

Viviana SUSIN
Rome, Italy — **Appellant**

Represented by Prof. Luigi Fumagalli, Attorney-at-Law, Pavia E Ansaldo
Via Dell'Annunciata 7, 20121 Milan, Italy

AND

FÉDÉRATION INTERNATIONALE DE NATATION (FINA)
Lausanne, Switzerland — **Respondent**

Represented by Mr. Jean-Pierre Morand, Attorney-at-Law, Legrand & Morand
37-39 Avenue Dumas, P.O. Box 126, 1211 Geneva 25, Switzerland

I. FACTS

1.1 The Parties

1. The Appellant, Ms. Viviana Susin, born on 24 May 1974, is a competitive swimmer licensed by the Italian Swimming Federation. Ms. Susin has competed for a number of years and has been a member of the Italian national swimming team at various international competitions, including the European Championships and the World Championships.

2. The Respondent, Fédération Internationale de Natation Amateur ("FINA"), is the international federation governing the sport of swimming world-wide. FINA has its seat in Lausanne, Switzerland. The Italian Swimming Federation is a Member Federation of FINA.

1.2 The FINA Doping Control Rules

3. The FINA Doping Control Rules principally applicable to this appeal are those contained in the FINA Handbook 1998 – 2000, as supplemented by the FINA Guidelines of Doping Control (the "Old Rules").

4. It is, however, common ground between the parties that the FINA Doping Control Rules which entered into force on 1 June 1999 (the "New Rules") do not differ materially from the Old Rules, with the exception of one particular provision highlighted below. Accordingly, for ease of reference, the Old Rules and the New Rules shall be referred to collectively as the "FINA Doping Control Rules" and, unless otherwise specified, the numbering of the New Rules shall be employed.

5. The following extracts of the provisions of the FINA Doping Control Rules are relevant to the issues in this appeal:

 (a) Rule DC 1.1 [DC 1 of the Old Rules]: *"Doping is strictly forbidden as a violation of FINA Rules."*

 (b) Rule DC 2.1 [DC 1.2 (a) of the Old Rules]: *"Doping offences are: (a) the finding of a prohibited substance (DC 3.1) within a competitor's body tissue or fluids;"*

 (c) Rule DC 3.1: *"Except as set forth in DC 3.5, the following classes of substances shall be prohibited when found in competition testing:"*

 (d) Rule DC 3.2: *"Appendix A to these Doping Control Rules more specifically identifies the substances prohibited by FINA in competition"* [DC 2.1 of the Old Rules referred to the list of the banned substances attached as Appendix 1 to the FINA Guidelines of Doping Control]

 (d) Appendix A identifies the list of the prohibited substances referred to by DC 3.2. Under Class C.1 *"Anabolic androgenic steroids"*, the prohibited substance *"testosterone"* has the following footnote (the "T/E Rule"): *"The presence of a testosterone (T) to epitestosterone (E) ratio greater than six (6) to one (1) in the urine of a competitor constitutes an offence unless there is evidence that this ratio is due to a physiological or pathological condition, e.g. low Epitestosterone excretion, androgen producing tumour, enzyme deficiencies."*

(e) Rule DC 8.3.2 [DC 8.1 of the Old Rules]: *"Analysis of all samples shall be done in laboratories accredited by the IOC. Such laboratories shall be presumed to have conducted tests and analyses of samples in accordance with the highest scientific standards and the results of such analyses shall be presumed to be scientifically correct. Such laboratories shall be presumed to have conducted custodial procedures in accordance with prevailing and acceptable standards of care; these presumptions may be rebutted by evidence to the contrary."* [DC 8.1 of the Old Rules ends with the following text: *"but there shall be no burden on the laboratory in the first instance to establish its procedures"*.]

(f) Rule DC 8.3.8 [DC 8.5 of the Old Rules]: *"If the B sample proves negative, the entire test shall be considered negative and the competitor, his Federation and FINA shall be so informed."*

(g) Rule DC 9.1.5 [DC 8.7 of the Old Rules]: *"The right to a hearing related to an offence under DC 9.1 can involve only:*
(a) whether the correct body tissue or fluid has been analysed;
(b) whether the body tissue or fluid has deteriorated or been contaminated;
(c) whether the laboratory analysis was correctly conducted;
(d) whether the minimum suspension for a first offence should be exceeded;
(e) whether a minimum sanction can be lessened in accordance with DC 9.10". [DC 8.7(e) of the Old Rules reads as follows: *"whether the retroactive sanction for a first offence shall be less than six (6) months"*.]

6. The New Rules contain the following additional provision in Appendix A under Class C.1 *"Anabolic androgenic steroids"*, the applicability of which is in issue in this appeal (the "IRMS Rule"): *"[Evidence obtained from metabolic profiles or isotopic ratio measurements may be used to draw definitive conclusions regarding anabolic androgenic steroids.]"*.

1.3 The Doping Control

7. On 22-24 January 1999, Ms. Susin competed as a member of the Italian national swimming team in the Vittel Cup held in Lyon, France. In the course of this competition, Ms. Susin underwent a routine doping control on 24 January 1999.

8. The urine collected from Ms. Susin was placed in two sealed bottles (the "A" and "B" samples). These samples were then submitted for analysis to an IOC-accredited laboratory, Laboratoire National de Dépistage du Doping, in Catenay-Malabry, France (the "Laboratory").

9. The Laboratory carried out an analysis of the "A" sample on 17 February 1999 and reported the following results in its report dated 18 February 1999 (Respondent's Exhibit R1):

Conclusions : T/E Ratio = 6.9 (d = 1.019)

Testosterone = 745 ng/ml
Epitestosterone = 108 ng/ml

Isotopic signature derived from metabolites, of an administration of testosterone or one of its precursors

NB: Screening Androsterone 13980 ng/ml
Etiocholanolone 14600 ng/ml [translation from French]

10. At the request of Ms. Susin and the Italian Swimming Federation, the Laboratory subsequently analysed the "B" sample, on 9-10 June 1999, and reported the following results in its report dated 11 June 1999 (Respondent's Exhibit R7):

> Conclusion:
>
> The analytical studies conducted on Wednesday 9 and Thursday 10 June 1999 within the framework of this counter-analysis requested by the Italian Swimming Federation have evidenced a very high urinary concentration of testosterone (545 ng/ml), a T/E ratio of 7.9 and an impoverishment in the ^{13}C of metabolites 5• - and 5• -androstanediols, which confirms the results of the first analysis and indicates an administration of testosterone or one of its precursors. [translation from French]

1.4 Investigation and Decision of the Italian Swimming Federation

11. By letter dated 23 February 1999, FINA reported the positive test results set out in the Laboratory's report dated 18 February 1999 to the Italian Swimming Federation. As this case fell within the jurisdiction of the national federation, FINA requested that the Italian Swimming Federation investigate the matter and report back with its decision concerning the findings against Ms. Susin.

12. The Italian Swimming Federation thereafter initiated a medical investigation, including a longitudinal hormonal study of Ms. Susin. This longitudinal hormonal study involved the analysis of urine tests conducted prior to 24 January 1999 and several subsequent urine tests conducted over the course of 1999 (Appellant's Exhibit 17; Respondent's Exhibit R9).

13. After reviewing the results of this medical investigation, the Italian Swimming Federation advised FINA, by letter dated 3 February 2000, of its conclusion that the elevated T/E ratio of Ms. Susin reported by the Laboratory in its reports dated 18 February and 11 June 1999 "*can be due to a pathological condition*". Based on this conclusion, the Italian Swimming Federation decided not to sanction Ms. Susin.

14. On 19 February 2000, after consultation with the FINA Doping Control Review Board, the FINA Bureau Executive decided that the Italian Swimming Federation had not applied the FINA Doping Control Rules correctly and that it had erred in deciding not to sanction Ms. Susin. In accordance with Rule C 18.7 of the FINA Constitution, the FINA Bureau Executive therefore called for a hearing before the FINA Doping Panel to review the decision of the Italian Swimming Federation.

1.5 Decision of the FINA Doping Panel

15. On 25 March 2000, the FINA Doping Panel conducted a hearing into this matter and rendered the following decision (the "FINA Doping Decision", Appellant's Exhibit A, emphasis in original):

> The athlete is found to have committed a doping offence under FINA Rules DC 2.1 (a) and DC 9.1.1.

She shall be

suspended for four (4) years
commencing on 25 March 2000.

All results achieved by the swimmer within a period of six (6) months before 24 January 1999 shall be cancelled.

This judgement shall become effective immediately.

The swimmer shall be responsible for all costs related to this case with the exception of the costs of the Panel and the members of the Panel.

16. Under cover of a letter dated 6 April 2000, FINA delivered the full reasons for the FINA Doping Panel Decision to Ms. Susin.

17. In its reasons, the FINA Doping Panel emphasised that Ms. Susin did not raise any complaint in regard to: (a) the identification of the samples; (b) the procedures for the collection of the samples and their transportation to the Laboratory; or (c) the correctness of the analysis of the "A" and "B" samples.

18. Instead, Ms. Susin's position was based upon the differences in the results of the analyses of the "A" and "B" samples. Specifically, Ms. Susin relied upon the written expert report of Prof. Pietro Melchiorri, which concluded that "*these differences do not fall within the limits of the analytic errors declared*".

19. In addition, Ms. Susin relied upon the expert evidence of Dott. Marco Bonifazi, who testified regarding her medical history and the medical investigations carried out on her between March and July 1999, including the longitudinal hormonal study. The following excerpt from Dott. Bonifazi's evidence is set out in the FINA Doping Panel's Decision, at p. 5:

> In conclusion, medical investigations on the swimmer indicate a condition of temporary anovulation (some months) with lowered blood levels of LH, FSH and Estropen and elevated blood levels of Testosterone precursors in association with a diagnosis of micropolycystic ovaries. This pathological condition can affect the T/E ratio in urine samples. [...]
>
> In the swimmer in question this condition probably occurred contemporaneously and immediately subsequent to the finding of the altered T/E ratio.

20. Ms. Susin assured the FINA Doping Panel that she had not taken any hormonal drugs or any precursor containing hormones. On the basis of the expert evidence on record and the legal principle "*in dubio pro reo*", Ms. Susin's counsel argued that the FINA Doping Panel could not come to a different conclusion than that reached by the Italian Swimming Federation.

21. In its decision, the FINA Doping Panel noted that Dott. Bonifazi's evidence was challenged by Prof. Jordi Segura, an expert witness called by FINA. Prof. Segura stated that the conclusion reached by Dott. Bonifazi was most unlikely. He testified that the analysis of the "A" sample in regard to androsterone (13980 ng/ml) and etiocholanolone (14600 ng/ml) indicated that the swimmer must have taken some precursors with hormonal ingredients. Prof. Segura also stated that, at a theoretical level, there were several good reasons that could explain the differences between the analyses of the "A" and "B" samples, though he was unable to specify the exact reason in this case without more detailed test results.

22. After summarising the evidence on record, the FINA Doping Panel turned to the applicable rules. It found that the Old Rules were applicable because the doping control at issue took place on 24 January 1999. It further held that the New Rules would only apply according to the principle of "*lex mitior*".

23. The FINA Doping Panel went on to state the following, at p. 8 of its decision:

> **The confirmed result of the doping control test, carried out on the swimmer constitutes evidence of a finding of a prohibited substance as defined by FINA Rule DC 2.1. Testosterone falls under the classification of anabolic androgenic steroids.**
>
> **The presence of a Testosterone (T) to Epitestosterone (E) ratio of greater than six (6) to one (1) in the urine of a swimmer constitutes an offence unless there is evidence that this ratio is due to physiological or pathological condition. However, as the presence of a the [sic] prohibited substance Testosterone in the urine of the swimmer has been established, the burden of proof shifts to the competitor to bring evidence that the T/E ratio of more than six (6) to one (1) is due to physiological or pathological condition.**

24. With respect to the validity of the doping control, the FINA Doping Panel rejected Ms. Susin's position that the differences between the results of the analyses of the "A" and "B" samples cast doubt upon the positive finding of doping. The FINA Doping Panel observed that the analyses were carried out by an IOC-accredited laboratory and were therefore presumed to be scientifically correct pursuant to FINA Rule DC 8.3.2 (DC 8.1 of the Old Rules). Moreover, the FINA Doping Panel preferred the evidence of Prof. Segura to that of Prof. Melchiorri and found that the differences between the results of the analyses of the "A" and "B" samples did not provide grounds for questioning the correctness of these analyses.

25. Having concluded that there was sufficient evidence of a T/E ratio greater than six (6) to one (1), the FINA Doping Panel went on to rule that Ms. Susin had failed to satisfy the burden of proving that this elevated T/E ratio was due to a physiological or pathological condition. It found that the expert evidence of Dott. Bonifazi only established "*the possibility of a pathological condition, which might have affected the T/E ratio*", and that such an "*unverified hypothesis*" could not be considered "evidence", as that term is used in Appendix A to the FINA Doping Control Rules, that the swimmer's reported T/E ratio of more than six (6) to one (1) was due to a physiological or pathological condition.

26. On the basis of the above reasoning, the FINA Doping Panel concluded that Ms. Susin had committed a doping offence under FINA Rules DC 2.1(a) and DC 9.1.1. It should, however, be noted that the FINA Doping Decision was based entirely upon the finding that Ms. Susin's T/E ratio exceeded the accepted limit of six (6) to one (1). While there is some reference to the longitudinal hormonal study carried out on Ms. Susin, the FINA Doping Panel did not rely upon this evidence in reaching its decision. Most significantly, FINA did not raise, and the FINA Doping Panel did not refer to or rely on in any way whatsoever, the Laboratory's isotopic ratio measurements ("IRMS") of the "A" and "B" samples which, according to its 18 February and 11 June reports, indicated the administration of testosterone or a testosterone precursor.

2. PROCEEDINGS BEFORE THE CAS

2.1 The Appeal

27. On 4 May 2000, Ms. Susin filed a Statement of Appeal against the FINA Doping Panel Decision with the Court of Arbitration for Sport (the "CAS"), pursuant to, and within the time limit prescribed in, Rule C 10.8.3 of the FINA Constitution and Art. R47 of the Code of Sports-related Arbitration (the "CAS Code").

28. On 15 May 2000, the Appellant filed an Appeal Brief with supporting exhibits, in accordance with Art. R51 of the CAS Code.

29. On 30 May 2000, the Acting Secretary General of the CAS issued a Notice of Formation of a Panel, which confirmed the appointment of Mr. Massimo Coccia (appointed by the Appellant) and Mr. Denis Oswald (appointed by FINA) as Arbitrators and the appointment of Mr. L. Yves Fortier, C.C., Q.C. (appointed by the President of the CAS Appeals Arbitration Division, following the resignation of Mr. Dirk-Reiner Martens) as President.

30. On 7 June 2000, the Acting Secretary General of the CAS issued an order of procedure on behalf of the President of the Panel (the "Order of Procedure"). The Order of Procedure addressed a number of procedural matters in respect of Ms. Susin's appeal and was duly countersigned by the parties to confirm their acceptance thereof.

31. On 9 June 2000, FINA filed an Answer, with supporting exhibits, in accordance with the extension of the time limit set out in Art. R55 of the CAS Code granted by the Acting Secretary General of the CAS (with no objection from Appellant) on 24 May 2000 and confirmed in the Order of Procedure.

2.2 The Application for Provisional Measures

32. On 4 May 2000, with the Statement of Appeal, the Appellant also filed an Application for Provisional Measures, with supporting exhibits, pursuant to Art. R37 of the CAS Code.

33. In her application, the Appellant requested that the FINA Doping Panel Decision be stayed until a final award was rendered in the appeal to the CAS, so that she could compete in the European Championships on 29 June – 6 July 2000 and thereby seek to qualify for the Sydney Olympic Games. The Appellant emphasised the fact that she was 27 years old and unlikely to have another chance to compete in the Olympic Games.

34. In an effort to establish the existence of a *prima facie* case, the Appellant filed three expert reports to demonstrate that the differences between the results of the analyses of the "A" and "B" samples indicate that (at least) the "B" sample had degraded. On the basis of this expert evidence, the Appellant submitted that the reported T/E ratio of the "B" sample could not be held to confirm that of the "A" sample and, accordingly, there was no basis for any sanction under the FINA Rules. The Appellant also advanced a number of other submissions regarding the proper interpretation of the FINA Doping Control Rules.

35. On 18 May 2000, FINA filed an Answer to the Application for Provisional Measures, in which it opposed the Appellant's request for a stay of the FINA Doping Panel Decision. In reliance upon two main arguments, FINA submitted that the Appellant was unlikely to succeed in her appeal, and therefore, her application for a stay of execution must be rejected.

36. First, FINA argued that the elevated T/E ratios of the "A" and "B" samples indicated the exogenous intake of testosterone. According to FINA, exogenous administration of a banned substance was further indicated by the fact that the longitudinal hormonal study carried out on the Appellant did not reveal recurrent high levels of testosterone which may have indicated a naturally high level of testosterone.

37. Second, and most significantly, FINA relied for the first time upon the Laboratory's IRMS analysis of the "A" and "B" samples. FINA submitted that this IRMS analysis provided positive direct evidence of an exogenous administration of testosterone or one of its precursors. As such, the IRMS analysis constituted, in and of itself, *decisive* evidence of doping. On this basis, FINA maintained that the particular T/E ratio found in Appellant's urine and the issue raised by her concerning the difference between the T/E ratios of her "A" and "B" samples were in effect irrelevant.

38. Due to the urgency of the matter and the fact that this Panel had not yet been constituted, the Appellant's Application for Provisional Measures came before the President of the CAS Appeals Arbitration Division, pursuant to Art. R37 and R52 of the CAS Code.

39. On 26 May 2000, the President of the CAS Appeals Arbitration Division issued an order dismissing the Appellant's Application for Provisional Measures without costs. In the recitals to this decision, the President found that "*prima facie, it is not likely that the decision appealed from is contrary to FINA Doping Control Rules*".

2.3 The Hearing

40. By letter dated 16 June 2000, the Appellant's counsel requested that the Panel hold a hearing and communicate its award to the parties before the end of July 2000. Counsel explained that the Italian National Olympic Committee had declared the Appellant to be eligible to participate in the Sydney Olympic Games, provided that she succeed in her appeal before the CAS and achieve the necessary qualifying times at certain competitions to be held in early August 2000. FINA's counsel confirmed that he had no objection to this request.

41. In an effort to accommodate the timing constraints faced by the Appellant, the hearing in this appeal was therefore held on 14 July 2000. The hearing took place at the CAS Headquarters in Lausanne, Switzerland, in accordance with the Order of Procedure.

42. At the hearing, the Panel heard the oral submissions of counsel for the parties as well as the expert evidence of Prof. Mario Serio (University of Florence, called by the Appellant) and Prof. Jacques de Ceaurriz (Director General of the Laboratory, called by FINA). Each expert witness was questioned by counsel for the parties and by the Panel. Prof. de Ceaurriz was unable to attend the hearing in person due to other professional commitments and, with the consent of Appellant's counsel, was heard by telephone. In addition, the Appellant's counsel expressly waived his right to question

Prof. Jordi Segura, the other expert witness relied upon by FINA in its written submissions.

43. At the conclusion of the hearing, both parties confirmed that their right to be heard and to be afforded due process had been respected in this appeal. The President advised that the Panel would render its decision as soon as possible, and the proceedings were declared closed.

44. On 25 July 2000, the Panel rendered its decision without reasons, which was immediately communicated to the parties pursuant to Art. R59 of the CAS Code.

2.4 The Submissions of the Parties

2.4.1 The Appellant's Submissions

45. In her Appeal Brief and in oral submissions, the Appellant advanced three main submissions:

(a) FINA has failed to prove the existence of a T/E ratio greater than six (6) to one (1);

(b) there is sufficient evidence to establish that the T/E ratio greater than six (6) to one (1), if any, was due to a physiological or pathological condition; and

(c) FINA is not entitled to rely on the IRMS analysis in this appeal.

(a) Failure to prove the existence of an elevated T/E ratio

46. The Appellant's first main submission is that FINA has failed to discharge the burden of proving that a doping offence has been committed and that the standard of proof to be met is high (*Meca-Medina and Majcen v. FINA*, CAS 99/A/234 and CAS 99/A/235, paras. 4.2 and 4.3).

47. The Appellant emphasises that the Laboratory's reported findings in this case reveal significant differences between the T/E ratios of the "A" and "B" samples. Specifically, the Laboratory's 17 February 1999 analysis of the "A" sample produced the following findings: testosterone, 745 ng/ml; epitestosterone, 108 ng/ml; resulting in a T/E ratio of 6.9. By contrast, the Laboratory's 9 June 1999 analysis of the "B" sample produced these findings: testosterone, 545.7 ng/ml (with a margin of error of 26.4 ng/ml or 4.83%); epitestosterone, 68.7 ng/ml (with a margin of error of 4.2 ng/ml or 6.11%); resulting in a T/E ratio of 7.9.

48. The Appellant summarises these differences in the following manner:

Testosterone: 745 – 546 = 199 ng/ml
corresponding to 26.7% of 745 ng/ml ("A" sample)
corresponding to 36.4% of 546 ng/ml ("B" sample)

Epitestosterone: 108 – 69 = 39 ng/ml
corresponding to 36% of 108 ng/ml ("A" sample)
corresponding to 56.5% of 69 ng/ml ("B" sample)

49. The Appellant tenders the evidence of three experts in order to demonstrate that the allegedly significant differences between the results of the analyses of the "A" and "B" samples show that (at least) the "B" sample had degraded prior to being analysed. On the basis of this evidence, discussed below, she submits that the "B" sample cannot be relied upon and therefore cannot be held to confirm the elevated T/E ratio found in the "A" sample, as required by the FINA Doping Control Rules.

50. First, the Appellant relies upon the written expert report of Prof. Pietro Melchiorri, Chair of Medical Pharmacology at the University of Rome (Appellant's Exhibit 8). The Appellant notes that this expert report was submitted to the FINA Doping Panel but was erroneously treated as though it concluded merely that the differences in the "A" and "B" results exceeded the normal range of analytical error.

51. The Appellant argues that Prof. Melchiorri's evidence also establishes that these differences may be explained by one of two hypothesises:

(i) the samples degraded due to improper preservation by the Laboratory; or

(ii) the samples were contaminated with different quantities of testosterone or epitestosterone (although there is insufficient data to prove this second hypothesis).

52. FINA did not request the opportunity to question Prof. Melchiorri and accordingly, he was not called as a witness at the hearing.

53. Second, the Appellant relies upon the expert evidence of Prof. Mario Serio, Professor of Endocrinology and Head of the Endocrine and Metabolic Unit of the Department of Clinical Physiopathology at the University of Florence. Prof. Serio has authored a number of academic articles regarding the quantitative analysis of steroids, which have been published in leading international scientific journals.

54. Prof. Serio gave the following evidence in his written expert report (Appellant's Exhibit 9):

> I have carefully examined the material of the procedure against Viviana Susin by FINA Doping Panel together with the scientists of Mass Spectrometry Reference Centre of my University.
>
> The major concern is related to the very high differences (more than 30% for T and more than 40% for E) found between the first and the second analysis. According to my personal experience in steroid Mass Spectrometry (see my personal Med-line [...]) this coefficient of variations between the measures is too high and out of the limits accepted by the scientific community for any chemical method applied to clinical practice. Coefficient of variations of more 20% are accepted when the steroid secretion is decreased by diseases (adrenal insufficiency for instance) or suppressed by pharmacological manipulations (glucocorticoid suppression for instance.
>
> Plasma and urinary samples with high concentration of steroids (as in the specific case) have coefficients of variation less than 10%.
>
> Because I cannot have doubts on the quality of analytical procedures (because of the experience of the operators) the unique explanation of such finding is the degradation of the samples.
>
> The reference lab did not give any demonstration of the absence of degradation in the samples.

> In particular the values of pH and urinary density of the samples are not reported. These parameters are useful for a preliminary evaluation of degradation.

55. During his testimony at the hearing, Prof. Serio confirmed and expanded upon the findings and conclusions set out in his written report.

56. Prof. Serio referred to several specific scientific publications to demonstrate that the differences between the results for the "A" and "B" samples far exceeded internationally recognised standards of variation for clinical studies in regard to testosterone. In Prof. Serio's opinion, the coefficient of variation for such studies should be no more than 10%, whereas the Laboratory's reports in this case revealed coefficients of variation of 36% and 56% respectively. Professor Serio testified that such variations could be attributable only to mistakes in the analysis, which he doubted, or to degradation of the samples, which he considered to be a very reasonable explanation.

57. Prof. Serio was also highly critical of the Laboratory for failing to report the pH and density of the urine collected from the Appellant. He testified that such data would have enabled him to reach a definitive conclusion regarding degradation of the samples and he considered the failure to report this data to be a serious clinical error.

58. The Appellant notes that Prof. Serio's evidence regarding acceptable coefficients of variation is largely consistent with that of Prof. de Ceaurriz, Director General of the Laboratory. During his testimony, Prof. de Ceaurriz acknowledged that the differences between the results for the "A" and "B" samples were significant (*"important"* in French) and that the coefficients of variation for such studies normally fall within the range of 20% to 25%.

59. The Appellant also relies upon the expert evidence of Prof. Roland Gärtner, Professor and Head of the Department of Endocrinology at the University of Munich – Innenstadt. Prof. Gärtner has authored a number of studies on the effects of banned substances on the T/E ratio and on the detection of such banned substances using the T/E ratio.

60. Prof. Gärtner gave, *inter alia*, the following evidence in his written expert report (Appellant's Exhibit 10):

> [...] The laboratory, which has done the tests has not performed additional testings to show, why the testosterone as well as epitestosterone levels in sample A" compared to sample "B" differ more than this would be allowed in clinical routine nor in a case like this. There are several possibilities that might explain these differences. To my opinion there are two main concerns:
>
> a) Physiologically, only glucuronidated steroids are secreted into the urine. For measurement, the urine samples have to be treated with • -glucuronidase and then the steroids have to be extracted from the samples with an organic compound (• - hexane). In the case of proteinuria (enhanced excretion of protein in the urine) there might be an enhanced excretion of non-glucuronidated steroids which might affect the extraction process. Protein content of the urine should have been measured.
>
> b) A decrease in total concentration of steroids also may be explained by a degradation of testosterone as well as epitestosterone during storage of the samples. Because the decrease of both steroids is not parallel (- 26,7 % for testosterone and - 36 % for epitestosterone) a dilution is excluded. In the case of degradation, then it is

> not excluded, that also in sample "A", which has been measured three weeks after delivering of the urine sample, there has been to some degree a degradation, which affects the test results. Because the degradation is not parallel and that of epitestosterone is enhanced compared to that of testosterone, a false high T/E ratio would be the result.
>
> Conclusion:
> We have no doubts about the quality of the test results *per se*. However, differences in testosterone and epitestosterone levels in sample "A" and "B" are not explained and should have been further analysed by the laboratory. Degradation processes during storage are a most likely explanation for these differences. No preliminary tests have been performed in the urine like protein content and pH of the samples, which are useful to exclude influences on degradation or in the case of proteinuria on total steroid excretion.

61. FINA did not request the opportunity to question Prof. Gärtner and accordingly, he was not called as a witness at the hearing.

62. The Appellant submits that the expert evidence Prof. Melchiorri, Prof. Serio and Prof. Gärtner, together with the testimony of Prof. de Ceaurriz, establishes with a very high degree of probability that the "B" sample was degraded.

63. The Appellant further argues that, as a result, it was only *by chance* that the "B" sample confirmed the positive result of the "A" sample. For chemical reasons, the degradation caused an increase in the T/E ratio from 6.9 to 7.9. If the degradation had caused a decrease in the T/E ratio by the same factor, the "B" sample would have been negative. This fact highlights the significant impact of the degradation on the "B" sample and demonstrates that the "B" sample is unreliable.

64. While Prof. Segura testified before the FINA Doping Panel that, at a theoretical level, there were several good reasons that might explain the differences between the T/E ratios of the "A" and "B" samples, the Appellant maintains that the T/E ratios cannot be considered reliable if such "*good reasons*" ultimately determine whether the doping test is positive or negative.

65. FINA Rule DC 8.3.8 provides that "*if the B sample proves negative, the entire test shall be considered negative*". Accordingly, the Appellant emphasises that FINA can only find that a doping offence has occurred and sanction a competitor if both the "A" sample and the "B" sample prove to be positive. If, due to degradation, the "B" sample is not reliable – which Appellant argues is the case, here – it cannot be held to confirm the elevated T/E ratio found in the "A" sample and the entire test must be held to be negative. In support of this position, the Appellant cites the following decisions of the CAS: *S v. International Equestrian Federation*, CAS 91/56; *Wang Lu v. FINA*, CAS 98/208.

66. The Appellant also notes that Prof. Gärtner's evidence casts doubt upon the reliability of the "A" sample itself. In particular, as cited above, Prof. Gärtner observed that it is possible that the "A" sample may have degraded to some degree in the three week period between the collection of the urine and its analysis by the Laboratory, which may have affected the results of the analysis.

67. Finally, the Appellant seeks to challenge any reliance on the presumption, set out in FINA Rule DC 8.3.2, that the Laboratory's findings were scientifically accurate. The terms of that rule provide that the presumption "*may be rebutted by evidence to the*

contrary" and, according to Appellant, the evidence of degradation in this case constitutes sufficient contrary evidence to rebut the presumption of accuracy. Moreover, the Appellant maintains that the presumption in FINA Rule DC 8.3.2 relates to the question of whether the laboratory analysis was correctly conducted whereas her appeal raises the question of whether the sample(s) had deteriorated or been contaminated, an important distinction and one which is recognised in FINA Rule DC 9.1.5.

68. Beyond the legal principle of "*in dubio pro reo*", the Appellant stresses that the issue of the reliability of doping tests is particularly critical in the world of sport because of the strict liability standard imposed upon athletes by most sports federations: *USA Shooting and Q. v. International Shooting Union*, CAS 94/129 at para. 50.

(b) Sufficient evidence that T/E ratio due to a physiological or pathological condition

69. The Appellant's second main submission is that she has adduced sufficient evidence to establish that the T/E ratio greater than six (6) to one (1), if any, was due to a physiological or pathological condition.

70. In support of this submission, the Appellant claims that the FINA Doping Panel misinterpreted the T/E Rule in holding that, once an elevated T/E ratio is found, the entire burden shifts to the competitor to produce sufficient evidence that this ratio is due to "*... a physiological or pathological condition*".

71. This interpretative error, says Appellant, becomes clear when one compares the text of the T/E Rule:

> The presence of a testosterone (T) to epitestosterone (E) ratio of greater than six (6) to one (1) in the urine of a swimmer constitutes an offence unless there is evidence that this ratio is due to physiological or pathological condition [...] [emphasis added]

with that of FINA Rule DC 9.10:

> Where the rules impose a minimum term suspension, the minimum may be lessened if the competitor can clearly establish how the prohibited substance got into the competitor's body or fluids and that the prohibited substance did not get there as a direct or indirect result of any negligence of the competitor. [...] [emphasis added]

72. While the terms of FINA Rule DC 9.10 expressly impose the burden of proof on the competitor to adduce exculpatory evidence, the wording of the T/E Rule, is different. In accordance with basic principles of construction, Appellant argues, the FINA drafters must be considered to have intended a different interpretation of the T/E Rule.

73. In particular, the Appellant submits that, rather than imposing the burden of proof exclusively on the competitor, the T/E Rule imposes an obligation on both the competitor *and* FINA to investigate possible explanations for the elevated T/E ratio. If the competitor provides a well-documented indication that the elevated T/E ratio could be due to a specific physiological or pathological condition, or to some factor other than the use of a prohibited substance, FINA then has a duty to co-operate and assist in the investigation and the onus of demonstrating why the explanation proffered by the competitor should be rejected.

74. This interpretation is said to be consistent with the approach adopted in a new provision contained in the version of Appendix A of the FINA Doping Control Rules which came into force on 1 July 2000:

> In the case of T/E greater than 6, it is mandatory that the relevant medical authority conducts an investigation before the sample is declared positive. A full report will be written and will include a review of previous tests, subsequent tests and any results of endocrine investigations. In the event that previous tests are not available, the athlete should be tested unannounced at least once per month for three months. The results of these investigations should be included in the report. Failure to co-operate in the investigations will result in declaring the sample positive.

Appellant submits that this provision was added to the FINA Doping Control Rules precisely in order to bring those Rules in line with the Olympic Movement Anti-Doping Code currently in force (Appellant's Exhibit 11).

75. While acknowledging that this procedure set out in the new Appendix A of FINA Doping Control Rules and in the Olympic Movement Anti-Doping Code is not directly applicable to her case, the Appellant argues that it nonetheless demonstrates that an elevated T/E ratio, without more, is an insufficient basis on which to make a definitive determination of testosterone abuse. Further support for this position is offered in the form of a statement made by Prof. Segura regarding the reliability of testosterone measurements at the Lausanne Conference on Anti-Doping held on 2-4 February 1999 (Appellant's Exhibit 12).

76. Appellant submits, in sum, that she has fully discharged the burden imposed upon her under the T/E Rule. Specifically, the investigation of her medical condition resulted in the following conclusions: (i) the elevated T/E ratio was found only in urine taken from her on 24 January 1999; and (ii) the sole finding of an elevated T/E ratio on 24 January 1999 could be explained by her physical condition at that time (see: Dott. Bonifazi's expert report submitted to the FINA Doping Panel (Appellant's Exhibit 13)). The Appellant further maintains that her physical condition was not disputed by FINA (and as such, was not discussed) before the FINA Doping Panel. On the contrary, FINA substantially accepted that she suffers from micropolycystic ovary syndrome (PCO-Syndrome), and did not address the contention that PCO-Syndrome, combined with the Appellant's decision to stop taking an oral contraceptive, could well have caused an elevated T/E ratio.

77. With respect to her physical condition, the Appellant also relies upon the expert report of Prof. Gärtner, filed for the first time before the CAS (Appellant's Exhibit 10):

> **a) Physiological and Pathological Condition of Mrs. Viviana Susin**
>
> Mrs. Susin is suffering from polycystic ovary syndrome (PCO-syndrome), which is a relative frequent disease in women with anovulatory menstrual cycles and oligomenorrhoa. [...]
>
> This condition (PCO-Syndrome) is associated with elevated androgen levels and may exceed those found in the plasma and urine of Mrs. Susin. [...]
>
> The intake of DHEA [dehydroepiandrosterone] would explain the elevated T/E ratio however, elevated endogenous DHEA levels are also reported from women with PCO syndrome. Therefore, in the view of endocrinology, it should be proven, that elevated T/E ratio above six also in women with PCO-Syndrome exclusively

documents androgen doping. There are no reports in the literature about the T/E ratio in women with this condition. [...]

78. By contrast, the Appellant emphasises that FINA did not carry out any investigation nor adduce any evidence to challenge the evidence that she tendered regarding her physical condition. Prof. Segura, FINA's expert before the FINA Doping Panel, testified that the analysis of the "A" sample in regard to androsterone and etiocholanolone indicated that "*the swimmer must have taken some precursors with hormonal ingredients*". He did not, however, testify that the Appellant in fact *took* such a prohibited substance. In any event, Prof. Segura's testimony is unsupported by medical evidence and was contradicted by Prof. Gärtner who provided the following additional evidence in his written expert report (Appellant's Exhibit 10): "*Elevated Androsterone as well as Etiocholanolone concentrations are consistent with the changes in androgen metabolism in patients with PCO-Syndrome.*" Furthermore, the FINA Doping Control Rules do not contain any reference to androsterone and etiocholanolone levels as a means of detecting testosterone abuse.

79. Based upon the record before the Panel, the Appellant submits that she has adduced sufficient evidence regarding a link between the elevated T/E ratio and her physical condition, for the purposes of the T/E Rule. FINA, on the other hand, has conceded that she suffers from PCO-Syndrome and has failed to produce any evidence to show that this physical condition did not cause the elevated T/E ratio. In these circumstances, the Appellant argues that the decision of the FINA Doping Panel must be set aside. In support of this position, the Appellant relies upon the IAAF decision in the Apkan Case, referred in to an article by Judge Lauri Tarasti, entitled "*When Can An Athlete Be Punished For Doping Offence*" (Appellant's Exhibit 14).

80. Finally, the Appellant maintains that additional subsidiary evidence confirms that her elevated T/E ratio, if any, was due to reasons other than the administration of a prohibited substance:

(a) the Appellant's performance in competitions during the period in which she allegedly took a prohibited substance did not vary from her performance in competitions at which she tested negative in doping controls. Indeed, her performance in the very competition at issue was worse than her performance one month later in a competition at which she tested negative (Curriculum of the Swimmer, Appellant's Exhibit 1); and

(b) the Appellant has been an active and vocal supporter of the fight against doping. She voluntarily participated in the Italian National Olympic Committee's National Anti-Doping Campaign, which involved, *inter alia*, periodic blood and urine testing. Two of these tests were conducted on 16 February 1999 and 24 June 1999 and did not show any sign of doping (Appellant's Exhibit 16). Moreover, she was tested for steroid concentration on 13 March, 12 June and 16 July 1999, and no sign of doping was detected (Appellant's Exhibit 17). The Appellant submits that these tests and her voluntary participation in the National Anti-Doping Campaign demonstrate that she has nothing to hide: simply, she is not engaged in doping practices.

(c) FINA is not entitled to raise the IRMS analysis in this appeal

81. The Appellant's third, and last, main submission is that FINA is not entitled to rely on the IRMS analysis in this appeal.

82. FINA raised the issue of the IRSM analysis, for the first time in this case, in its Answer to the Application for Stay of Execution, which was filed after the Appeal Brief. Consequently, the Appellant had the opportunity to address the issue only in her oral submissions at the hearing. The Appellant has advanced five arguments with respect to FINA's reliance on the IRMS analysis.

83. First, the Appellant argues that FINA is not entitled to rely upon the IRMS Rule (as defined above in paragraph 6 because this provision was not in force on 24 January 1999, the date of the doping control at issue in this case.

84. FINA first introduced the IRMS Rule in the New Rules which came into force on 1 June 1999. The IRMS Rule appears in *"Appendix A: Prohibited Substances – In Competition"* under the heading *"C. ANABOLIC AGENTS 1. Anabolic androgenic steroids"* and provides as follows:

> *[Evidence obtained from metabolic profiles or isotopic ratio measurements may be used to draw definitive conclusions regarding anabolic androgenic steroids.]*

Prior to the introduction of the IRMS Rule, the FINA Doping Control Rules contained no reference whatsoever to IRMS or its use in proving doping offences.

85. While the IRMS Rule on its face addresses the use of evidence obtained from IRMS analysis, the Appellant maintains that this provision is not merely of an evidentiary or procedural nature. FINA has argued that the IRMS Rule applies separate and apart from the T/E Rule and, in and of itself, provides a decisive basis for a finding of doping. Appellant submits that if FINA is correct, the IRMS Rule is, in effect, substantive in nature because it deprives athletes of the opportunity to rebut a positive finding of doping by precluding the defence set out in the T/E Rule.

86. On this basis, the Appellant concludes that the IRMS Rule is properly characterised as a substantive provision. As such, it cannot be applied to a doping control which occurred before it came into force, due to the fundamental legal prohibition of the retroactive application of substantive rules, regulations and laws.

87. This conclusion is said by Appellant to have been confirmed in the present case by the conduct of the Italian Swimming Federation and FINA themselves. She states that the Italian Swimming Federation and FINA made no mention of the IRMS results prior to the commencement of the present appeal because they did not consider the IRMS Rule to be applicable in this case. This explains, for example, why the Italian Swimming Federation initiated a longitudinal hormonal study rather than suspending the Appellant immediately on the basis of the IRMS Rule. This explains why the FINA Doping Panel did not rely upon, or even refer to, the IRMS Rule in its decision.

88. Second, the Appellant argues that, even if the IRMS Rule is found to be applicable in this case, FINA has misinterpreted the rule in suggesting that it constitutes an independent basis for a finding of doping, separate and apart from the T/E Rule.

89. In the Appellant's submission, the offence at issue in this appeal is that set out in the T/E Rule: "*The presence of a testosterone (T) to epitestosterone (E) ratio greater than six (6) to one (1) in the urine of a competitor constitutes an offence* [...]". The IRMS Rule, by contrast, does not constitute an offence.

90. The Appellant maintains that the IRMS Rule can only be applied to confirm a positive finding under the T/E Rule. In this sense, the IRMS Rule is properly interpreted as an alternative to FINA's new rule requiring that a longitudinal hormonal study be performed to confirm a positive finding under the T/E Rule (See: Appendix A to FINA Doping Control Rules in force from 1 July 2000). The IRMS Rule does not, however, obviate the basic requirement for FINA to prove the existence of a T/E ratio greater than six (6) to one (1). In the absence of a valid positive finding under the T/E Rule, the Appellant submits that IRMS results cannot be relied upon for a finding of doping. Instead, the entire doping control must be declared negative.

91. The Appellant asserts that this interpretation is preferable to the one proposed by FINA because it gives effect to both the IRMS Rule and the T/E Rule. Under FINA's interpretation, the T/E Rule is essentially read out of the FINA Doping Control Rules: the ability to make definitive findings of doping under the IRMS Rule would render the T/E Rule superfluous. If this had been the intention of the FINA drafters, the T/E Rule would have been simply deleted from the FINA Doping Control Rules.

92. Moreover, Appellant submits that the Appellant's interpretation of the IRMS Rule is confirmed by the evidence of Prof. de Ceaurriz, Director General of the Laboratory. Under cross-examination, Prof. de Ceaurriz testified that, in practice, the Laboratory only performs an IRMS analysis in the event that a T/E ratio of greater than six (6) to one (1) is found. The Laboratory does not perform IRMS analysis in the first instance. This practice is entirely consistent with the view that IRMS testing is only intended to confirm positive findings under the T/E Rule.

93. To the extent that there are ambiguities in the IRMS Rule and the T/E Rule, the Appellant invokes the doctrine of *contra proferentem* and states that any such ambiguities must be resolved in her favour and against FINA, the drafter of the FINA Doping Control Rules.

94. The third argument advanced by the Appellant is based upon Prof. de Ceaurriz's evidence that IRMS analysis is only carried out by seven or eight of the twenty-seven laboratories accredited by the IOC. In these circumstances, it is clear that only some athletes are subjected to IRMS analysis while many others never have to face the consequences of such a doping control. The Appellant submits that doping controls must be applied to all athletes equally and that it is unfair that she be effectively singled out for sanction on the basis of a method of analysis that is not universally applied.

95. Fourth, the Appellant suggests that the IRMS analysis may have been affected by the degradation of the "A" and "B" samples. In this regard, the Appellant relies upon the expert evidence tendered on the issue of degradation, discussed above. It should, however, be noted that the Appellant's counsel did not pursue this argument in his closing oral submissions, and that no expert evidence was adduced concerning the effects of sample degradation on the reliability of IRMS analysis.

96. Fifth, the Appellant suggests that, under the doctrine of estoppel, FINA should be precluded from raising the IRMS analysis for the first time at this late stage of the doping control procedure. The Appellant did, however, acknowledge that this Panel has full power to review the facts and the law applicable to the case under Art. R57 of the CAS Code and, accordingly, did not place great emphasis on this argument.

97. Nevertheless, the Appellant submits that she was prejudiced by FINA's failure to raise the IRMS argument in a timely manner. Had FINA done so at the outset, upon receipt of the Laboratory's first report dated 18 February 1999, the Appellant's four-year suspension would have started to run much earlier. Instead, there was a delay of over one year and consequently, the Appellant's suspension will effectively prevent her from ever competing again.

(d) The Appellant's Request for Relief

98. Based upon the above submissions, the Appellant requests the following relief in this appeal arbitration proceeding:

> A. Merits
>
> i. Quash the decision adopted by the FINA Doping Panel on 25 March 2000, and delivered to the Appellant in its full wording on 6 April 2000; and
>
> ii. Hold that no sanction has to be imposed on Appellant; and/or
>
> iii. Grant any other equitable relief the Panel of Arbitrators may deem proper.
>
> B. Costs
>
> i. Award the costs of the present appeals arbitration against Respondent, and;
>
> ii. Order Respondent to reimburse Appellant for all costs, including legal fees and other expenses, incurred in connection with this arbitration, pursuant to Art. R65.3 of the Code of Sports-related Arbitration, as well as for all costs, including legal fees and other expenses, incurred in connection with the proceedings before the FINA Doping Panel. [...]

2.4.2 FINA's Submissions

99. In the Answer and in oral submissions, FINA has asserted three principal claims:

(a) the Panel has full power to review the facts and the law;

(b) the IRMS analysis constitutes positive direct evidence of a doping offence; and

(c) the T/E ratio of greater than six (6) to one (1) and the longitudinal hormonal study constitute positive corroborative evidence of a doping offence.

(a) The Panel has full power to review the facts and the law

100. FINA's first main submission is that the Panel has full power to review the facts and the law in an appeal arbitration proceeding of this type, in virtue of Art. R 57 of the CAS Code.

101. As a consequence, FINA argues that the Panel must examine the case *ab novo* and is not bound by the reasoning adopted by the FINA Doping Panel. The Panel is charged with determining whether the FINA Doping Decision is correct in its result, and if not, what alternative result should be reached.

102. Given the full power of review accorded by Art. R57 of the CAS Code, FINA maintains that the Panel is fully entitled to rely upon the IRMS analysis in finding that the Appellant committed a doping offence, despite the fact that this analysis was not raised before the FINA Doping Panel.

(b) The IRMS analysis constitutes positive direct evidence of a doping offence

103. FINA's second main submission is that the IRMS analysis in this case constitutes positive, direct and decisive evidence of a doping offence, such that no further or other evidence is required for the Panel to uphold the FINA Doping Decision.

104. FINA submits that the doping offence at issue in this case is set out in FINA Rule DC 2.1(a): *"the finding of a prohibited substance (DC 3.1) within a competitor's body tissue or fluids"*.

105. FINA Rules DC 3.1 and DC 3.2, read together, according to FINA, provide that the substances prohibited in competition are identified in the list set out in Appendix A to the FINA Doping Control Rules, which includes anabolic androgenic steroids such as testosterone and testosterone precursors such as androstenedione, as well as *"related substances"*.

106. FINA states that because testosterone is produced endogenously, for many years it was not scientifically possible to distinguish endogenous testosterone from exogenously-administered testosterone. As a result, FINA introduced the T/E Rule, which permits one to draw an inference of exogenous administration of testosterone based upon an abnormally elevated T/E ratio. Where an elevated T/E ratio is found, additional analysis – such as a longitudinal hormonal study – is carried out in an attempt to confirm whether the T/E ratio detected is due to the presence of endogenous or exogenous testosterone.

107. FINA goes on to argue that IRMS analysis has been recently introduced by IOC-accredited laboratories. Unlike the T/E ratio, IRMS analysis provides *direct* evidence of an exogenous administration of testosterone. FINA maintains that the conclusive character of IRMS analysis – from both a legal as well as a scientific standpoint – is expressly confirmed by: (a) the IRMS Rule contained in the FINA Doping Control Rules; (b) the testimony of Prof. de Ceaurriz at the hearing; and (c) a statement made by Prof. Segura at the Lausanne Conference on Anti-Doping held on 2-4 February 1999 (Appellant's Exhibit 12).

108. In FINA's submission, a positive IRMS analysis provides decisive evidence of exogenous administration of a prohibited substance, and constitutes conclusive grounds for a finding that a doping offence has been committed under FINA Rule DC 2.1(a).

109. In this case, FINA declares that the results of the IRMS analysis performed on both the "A" sample and the "B" sample provide direct and conclusive evidence of an exogenous administration of the banned substance testosterone or a precursor to

testosterone such as androstenedione or a *"related substance"* (Laboratory Report dated 18 February 1999 (Respondent's Exhibit R1); Laboratory Report dated 11 June 1999 (Respondent's Exhibit R 7)).

110. The Laboratory's IRMS analysis has been confirmed by Prof. de Ceaurriz, Director General of the Laboratory, in his oral testimony and in his written expert report dated 17 May 2000 (Respondent's Exhibit R6), as well as by Prof. Segura in his written expert report dated 17 May 2000 (Respondent's Exhibit R4).

111. In response to Appellant's claim that her elevated testosterone level could have been caused by a physiological or pathological condition, FINA reiterates that the results of the IRMS analysis exclude any such possibility. In this respect, FINA relies upon the following excerpt from Prof. de Ceaurriz's expert report dated 2 June 2000 (Respondent's Exhibit R8):

> I confirm that the samples A and B no. 139708 were indeed submitted to a carbon isotopic analysis by technique GC-C-IRMS to differentiate endogenous testosterone from the exogenous hormone.
>
> In both cases [the "A" and "B" samples], the results were probative and supported the conclusion of an administration of testosterone. These converging results exclude that the high level of urinary testosterone can be the consequence of a particular physiological or pathological condition. [translation from French]

112. In view of the IRMS analysis in this case, FINA maintains that any evidence indicating that the Appellant's elevated T/E ratio may have been the result of PCO-Syndrome or some other physiological or pathological state is irrelevant. Given that the IRMS analysis establishes an exogenous administration of testosterone or a testosterone precursor, the mere theoretical possibility that the Appellant's elevated T/E ratio may conceivably have had other causes must be considered to be without merit. Indeed, FINA states that even a *normal* T/E ratio would be irrelevant in the face of a positive finding obtained through IRMS analysis.

113. In oral submissions, FINA's counsel specifically addressed each of the five arguments, summarised above, advanced by the Appellant in support of her submission that the IRMS analysis cannot be relied upon in this appeal.

114. First, FINA disputes the Appellant's argument that the IRMS Rule is a substantive provision and thus cannot be applied retroactively to a doping control which occurred before the provision came into force.

115. FINA emphasises that one must distinguish between rules that establish doping offences and those that relate to the procedure by which the commission of doping offences is proved. It is submitted that the relevant doping offence in this case is set out in FINA Rule DC 2.1(a). This is a substantive rule: it establishes, or creates, an offence. By contrast, FINA argues that the T/E Rule and the IRMS Rule are procedural, or evidentiary, in nature: they do no more than describe certain methods for proving that the doping offence in question has been committed.

116. In his oral submissions, FINA's counsel acknowledged that the wording of the T/E Rule is somewhat confusing in providing that an elevated T/E ratio *"constitutes an offence"*. The T/E Rule does not, however, according to FINA, create an offence. The offence at issue in this case is the exogenous administration of testosterone.

117. FINA maintains that since the nature of the T/E Rule is to establish (by means of an elevated T/E ratio) a factual presumption that a doping offence (exogenous administration of testosterone) has been committed, which may be rebutted by particular evidence (demonstrating that the elevated T/E ratio is due to a physiological or pathological condition), it is manifestly an evidentiary rather than a substantive rule.

118. Similarly, the IRMS Rule establishes that IRMS analysis constitutes conclusive proof of doping, but it in no way creates or alters a substantive doping offence. The fact that the conclusive nature of IRMS analysis precludes the use of exculpatory evidence to rebut evidence of doping based on an elevated T/E ratio, as Appellant claims, does not, according to FINA, qualify the evidentiary character of the IRMS rule.

119. On the basis that the IRMS Rule is purely evidentiary in nature, FINA maintains that the IRMS Rule may be applied to a doping control which occurred before the Rule came into force.

120. Second, FINA maintains that there is no foundation for the Appellant's argument that the IRMS Rule can only be applied as confirmation of a positive finding under the T/E Rule.

121. FINA submits that the T/E Rule and the IRMS Rule are separate and independent rules, addressing different evidentiary methods for proving doping offences. As a result, once a positive finding of doping is made through IRMS analysis, there is no further need to consider the T/E Rule.

122. In support of this position, FINA points out that the T/E Rule cannot have been intended to provide the sole basis for a finding of doping. If this were otherwise, and in the absence of amendments to the FINA Doping Control Rules, it would rule out the use of evidence obtained through new scientific methods.

123. FINA argues that if IRMS analysis is not systematically applied as part of the primary analysis of samples, this is due purely to administrative and financial reasons. FINA refers to the testimony of Prof. de Ceaurriz in this regard. The current practice of applying IRMS analysis as confirmation of an elevated T/E ratio does not, therefore, in FINA's view, support the Appellant's interpretation of the FINA Doping Control Rules.

124. Third, FINA rejects the suggestion that the limited use of IRMS analysis results in an unfairness to the Appellant. The mere fact that only a small number of IOC laboratories are able to provide a particular form of evidence does not mean that athletes are being treated unequally. In other words, the Appellant cannot claim to be the victim of discrimination on the grounds that, while FINA has obtained definitive evidence of a doping offence in her case, it has been unable to secure such evidence in relation to other athletes who may or may not be guilty of a doping offence.

125. Fourth, FINA submits that the question of whether there was degradation of the "A" and "B" samples is irrelevant. Evidence of the quantitative variations between the results of the analyses on the "A" and "B" samples has no bearing on the reliability of the IRMS analysis. IRMS analysis is based on a direct identification of prohibited substances and not on quantitative relationships. As there are no minimum quantitative levels prescribed for prohibited substances, the fact that the quantitative results may have varied from the "A" sample to the "B" sample is of no importance. In both the

"A" and "B" samples, the IRMS analysis directly determined the presence of a prohibited substance.

126. In support of this position, FINA relies upon the evidence of Prof. Serio and Prof. de Ceaurriz. Both of these experts testified at the hearing that degradation cannot create a prohibited substance that is not otherwise present in the urine sample of an athlete, and thus the possibility of degradation can have no impact on the IRMS analysis in this case.

127. Fifth and finally, FINA disputes the Appellant's argument that it should be estopped from raising the IRMS analysis in this appeal. While acknowledging that the IRMS analysis should have been raised before the FINA Doping Panel, FINA maintains that the Panel is free to rely upon this analysis due to the broad scope of review in appeal arbitration proceedings under the CAS Code.

128. Moreover, FINA submits that its failure to raise the IRMS analysis at an earlier stage has not caused any prejudice to the Appellant. The IRMS analysis constitutes direct and conclusive evidence of a doping offence and if these results had been raised earlier, it would merely have confirmed that the Appellant has no grounds to appeal the FINA Doping Decision.

(c) The elevated T/E ratio and longitudinal hormonal study constitute positive corroborative evidence of a doping offence

129. FINA's third main submission is that the Appellant's elevated T/E ratio and longitudinal hormonal study constitute positive corroborative evidence of a doping offence.

130. Despite the differences in the results of the analyses of the "A" and "B" samples, FINA maintains that the finding of a T/E ratio greater than six (6) to one (1) in both samples provides corroboration for the IRMS analysis.

131. In support of this position, FINA relies upon Prof. de Ceaurriz's written expert report dated 2 June 2000 (Respondent's Exhibit R8), together with the following excerpt from his written expert report dated 17 May 2000 (Respondent's Exhibit R6):

> For me, this result is without any ambiguity with respect to the administration of testosterone or one of its precursors. There effectively exists a analytical variability of the determination of the T/E ratio which does not call the conclusion into question, on the one hand because this ratio was always found > to 6 and of the same order of value, and secondly because the results of the isotopic analysis are decisive. [translation from French]

132. Moreover, and in any event, FINA reiterates that an elevated T/E ratio is indirect evidence and is not necessary for a finding of doping in view of the positive direct evidence provided by the IRMS analysis. Rather, the Appellant's elevated T/E ratio is simply corroboration of the conclusive evidence provided by IRMS analysis.

133. In addition to the IRMS analysis and T/E ratio, FINA points out that the Appellant also participated in a longitudinal hormonal study initiated by the Italian Swimming Federation.

134. A longitudinal hormonal study is intended to determine whether an athlete's elevated T/E ratio recurs over time, thus indicating whether he or she has a naturally elevated T/E ratio due to some physiological or pathological condition. If the elevated T/E ratio does not recur over time, the study indicates an exogenous administration of testosterone or one of its precursors. FINA bases this explanation on a recent exchange of correspondence between its counsel (Respondent's Exhibit R3) and Prof. Segura (Respondent's Exhibit R4).

135. In this case, the Appellant's longitudinal hormonal study does not show that the elevated T/E ratio detected on 24 January 1999 recurred over the period of the study. Accordingly, FINA argues that this longitudinal hormonal study constitutes further corroborative evidence that the Appellant's elevated T/E ratio was due to an exogenous administration of a prohibited substance rather than a naturally elevated T/E ratio. FINA relies upon the results of the Appellant's longitudinal hormonal study in this regard (Respondent's Exhibit R9).

(d) FINA's Request for Relief

136. Based upon the above submissions, FINA requests the following relief in this appeal arbitration proceeding:

- reject the appeal inasmuch as it requests the overturning of the decision made by the FINA Doping Panel.
- confirm the suspension of the Appellant for a duration of four years from March 25, 2000.
- confirm the cancellation of all the results achieved within the period commencing six months before January 24, 2000.
- order the Appellant to pay to FINA an amount (together with interests at 5% from the date of the decision) representing an appropriate compensation for the costs incurred by FINA in the course of the appeal proceedings, in particular attorney's fees.
- reject any contrary or other claims of the Appellant.

3. LEGAL ANALYSIS

3.1 Jurisdiction and Other Procedural Matters

3.1.1 Jurisdiction

137. The jurisdiction of the CAS and the Panel arise out the provisions of the CAS Code and the FINA Constitution.

138. Art. R47 of the CAS Code provides the following in respect of appeal arbitration proceedings:

> **Appeal**
>
> A party may appeal from the decision of a disciplinary tribunal or similar body of a federation, association or sports body, insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to

> him prior to the appeal, in accordance with the statutes or regulations of the said sports body.

139. Rule C 10.8.3 of the FINA Constitution provides the following in respect of appeals against decisions of the FINA Doping Panel:

> An appeal against a decision by the Bureau or the FINA Doping Panel shall be referred to the Court of Arbitration for Sports (CAS), Lausanne, Switzerland, within the same term as in C 10.8.2. The only appeal from a decision of the Doping Panel shall be to the CAS. The CAS shall also have exclusive jurisdiction over interlocutory orders and no other court or tribunal shall have authority to issue interlocutory orders relating to matter before the CAS. Decisions by the CAS shall be final and binding, subject only to the provisions of the Swiss *Private International Law Act*, section 190.

140. In view of Rule C 10.8.3 of the FINA Constitution, it is clear that the Appellant's appeal against the FINA Doping Decision meets the jurisdictional requirements set out in Art. R47 of the CAS Code.

141. Furthermore, the parties expressly confirmed the jurisdiction of the CAS and the composition of the Panel by duly countersigning the Order of Procedure.

3.1.2 Seat and Language

142. In accordance with Art. R28 of the CAS Code, the seat of this appeal arbitration proceeding is Lausanne, Switzerland. The parties expressly confirmed this choice of seat by duly countersigning the Order of Procedure.

143. In accordance with Art. R29 of the CAS Code, the language of this appeal arbitration proceeding is English. The parties expressly confirmed this choice of language by duly countersigning the Order of Procedure.

3.1.3 Applicable Procedure

144. The applicable procedure is that specified for appeal arbitration proceedings in Art. R47 *et seq.* of the CAS Code and in the Order of Procedure.

145. Art. R57 of the CAS Code provides the following in respect of the Panel's scope of review: "*The Panel shall have full power to review the facts and the law.*" Accordingly, the Panel is not bound by the evidence adduced before, or the factual or legal findings of, any other body or court which has ruled on this case.

3.2 Applicable Law

146. With respect to appeal arbitration proceedings, Art. R58 of the CAS Code provides the following in regard to the applicable law:

> **Law Applicable**
>
> The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports body which has issued the challenged decision is domiciled.

147. The "*applicable regulations*" in this case are the FINA Doping Control Rules referred to above in Section 1.2. Those rules do not specify any choice of law in respect of an appeal to the CAS or otherwise.

148. In the absence of a choice of law by the parties, Art. R57 of the CAS Code stipulates that the law of the country in which FINA is domiciled shall apply. Article C 1.1 of the FINA Constitution provides that "[t]*he site of FINA shall be located in the City of Lausanne, Switzerland*". Accordingly, the Panel shall apply the law of Switzerland.

3.3 The Offence at Issue

149. The Panel finds that the offence at issue in this appeal is that set out in FINA Rule DC 2.1(a): "*the finding of a prohibited substance (DC 3.1) within a competitor's body tissue or fluids*".

150. FINA bears the burden of proving the presence of a prohibited substance within the Appellant's body tissue or fluids, and the standard of proof to be met is high: *Meca-Medina and Majcen v. FINA*, CAS 99/A/234 and CAS 99/A/235, paras. 4.2 and 4.3.

151. For the following reasons, the Panel has concluded that FINA has satisfied its burden of proving that the Appellant committed a doping offence under FINA Rule DC 2.1(a):

(a) IRMS analysis provides direct and conclusive evidence of an exogenous administration of the prohibited substance testosterone by the Appellant;

(b) the Panel is entitled to rely upon the IRMS analysis in the circumstances of this case; and

(c) the Appellant's elevated T/E ratio and longitudinal hormonal study provide corroborative evidence of an exogenous administration of testosterone.

3.4 The IRMS Analysis Provides Conclusive Evidence of a Doping Offence

152. Based upon the evidence on record, and as explained more fully below, the Panel finds that FINA has demonstrated with the requisite degree of certainty that the IRMS analysis in this case provides direct and conclusive evidence of an exogenous administration of testosterone by the Appellant.

153. With respect to the specific facts of this case, the Laboratory performed IRMS analysis on the "A" sample and the "B" sample collected from the Appellant on 24 January 1999. The results of the IRMS analysis of both samples established an exogenous administration of testosterone or one its precursors (Laboratory Report dated 18 February 1999 (Respondent's Exhibit R1); Laboratory Report dated 11 June 1999 (Respondent's Exhibit R 7)). Under Appendix A to the FINA Doping Control Rules, testosterone and testosterone precursors such as androstenedione, as well as "*related substances*", are specifically identified as "*prohibited substances*" for the purpose of FINA Rule DC 2.1(a). Accordingly, the IRMS analysis has established the presence of the prohibited substance testosterone in both the "A" and "B" samples, as required under the FINA Doping Control Rules.

154. The results of the Laboratory's IRMS analysis have been expressly confirmed by the uncontroverted expert evidence of Prof. de Ceaurriz, Director General of Laboratory, both in his testimony at the hearing and in his written expert report dated 17 May 2000 (Respondent's Exhibit R6):

> I confirm that the result of the isotopic analysis of carbon effected on sample 139708 does constitute proof of an administration of testosterone or one of its precursors. An impoverishment of the stable isotope ^{13}C allows one to draw this conclusion from a punctual sample. [translation from French]

155. The results of the IRMS analysis have also been confirmed by Prof. Segura in his written expert report dated 17 May 2000 (Respondent's Exhibit R4):

> [T]he isotope ratio measurement indicate the administration of an exogenous substance related to testosterone. Considering the additional data obtained by the laboratory in Paris regarding the concentrations of the main metabolites of testosterone (androsterone and etiocholanolone), only the administration of androstenedione is known, to our knowledge, to produce simultaneously the observed concentrations and the high T/E ratio. It is important to recall that androstenedione is also included in the list of prohibited substances, as is testosterone itself.

156. While not in force at the time of the doping control at issue, the Panel considers the IRMS Rule to be compelling evidence that IRMS analysis is a scientifically conclusive method for proving doping:

> *[Evidence obtained from metabolic profiles or isotopic ratio measurements may be used to draw definitive conclusions regarding anabolic androgenic steroids.]*

157. Presumably, the FINA drafters used the permissive wording "*may be used*" rather than the mandatory wording "*shall be used*" due to the fact that IRMS analysis is only one method for proving the exogenous administration of testosterone and is not, as submitted by FINA, universally available. The T/E Rule is another method specifically recognised under the FINA Doping Control Rules.

158. The question of whether the Panel is entitled to apply the IRMS Rule to the facts of this case is considered below in Sections 3.5.2 and 3.5.3. For present purposes, it suffices to remark that FINA's enactment of the IRMS Rule constitutes strong evidence that the international scientific community has determined IRMS analysis to be a conclusive method for determining the exogenous administration of testosterone. The Panel considers it highly unlikely that FINA would have enacted such a rule in the absence of a clear scientific consensus on the reliability of IRMS analysis.

159. In addition to the IRMS Rule, FINA has tendered the expert evidence of Prof. de Ceaurriz. In his expert reports and testimony at the hearing, Prof. de Ceaurriz has explained that IRMS analysis involves a comparison of the differences between the Carbon 13 isotope of endogenous and exogenous testosterone. Through this process, IRMS analysis provides direct and conclusive scientific evidence of the presence of exogenous testosterone.

160. At the hearing, Prof. de Ceaurriz gave the following testimony with respect to the conclusive character of IRMS analysis:

> Following the Olympic Games in Nagano, IRMS analysis became widely accepted as a free-standing method for determining the presence of exogenous testosterone.

> [...] Based on IRMS analysis, we can completely exclude the possibility of an endogenous cause for high testosterone. Athletes have no defence to a positive IRMS finding. It provides a much higher degree of certainty than the T/E ratio; there is no ambiguity in IRMS analysis.

161. Prof. Ceaurriz's evidence is uncontroverted on these points. Furthermore, apart from raising the question of degradation, the Appellant has tendered no evidence to challenge FINA's position that IRMS analysis provides conclusive scientific evidence of an exogenous administration of testosterone.

162. In the opinion of the Panel, the Appellant has made a persuasive case that the "B" sample was affected by degradation. Taken together, the expert evidence of Prof. Melchiorri, Prof. Serio, Prof. Gärtner and Prof. de Ceaurriz clearly establishes that the coefficients of variation between the T/E ratios found in the "A" sample and the "B" sample fall outside of the acceptable range for clinical studies. While various possible explanations for this variation were offered, the Appellant's expert witnesses all agreed that degradation of the "B" sample was the most likely explanation for the differences between the T/E ratios. Indeed, even Prof. de Ceaurriz, Director General of the Laboratory, conceded that degradation was undoubtedly one possible explanation for these differences.

163. Notwithstanding this evidence, the Panel has concluded that a finding of degradation does not cast any doubt on the scientific reliability of the IRMS analysis. This is because the Appellant has failed to tender any expert evidence that might establish that degradation would have an adverse impact on IRMS analysis. There is simply no evidence of any kind on record to support such a contention.

164. Rather, the evidence on record firmly establishes that IRMS analysis is not affected by degradation. At the hearing, Prof. Serio and Prof. de Ceaurriz both testified that the process of degradation cannot create a prohibited substance that is not otherwise present in the urine sample of an athlete. Given the fact that IRMS analysis directly detects the presence of a prohibited substance, it is clear that degradation could have no impact whatsoever on the accuracy of this method of analysis. In view of this evidence, the Panel is convinced that any degradation which may have occurred did not cause, or in any way qualify or mitigate, the positive results of the IRMS analysis.

165. For the above reasons, the Panel finds that the IRMS analysis performed on the "A" sample and the "B" sample provides conclusive scientific evidence of an exogenous administration of the prohibited substance testosterone or one of its precursors.

166. Having made this finding, however, it nonetheless remains for the Panel to determine whether it is entitled to rely upon the IRMS analysis in the circumstances of this case.

3.5 The Panel is Entitled to Rely on the IRMS Analysis

3.5.1 Estoppel and Procedural Fairness

167. From the perspective of the Panel, the most difficult and troubling aspect of this case is that FINA has raised the issue of IRMS analysis, and seeks to rely on the results of such analysis, for the first time, in this appeal to the CAS.

168. The results of the IRMS analysis were set out in clear and unambiguous terms in the Laboratory's first report dated 18 February 1999. Despite this fact, neither the Italian Swimming Federation, a Member Federation of FINA, nor FINA itself made any reference whatsoever to the IRMS analysis during a review process which lasted over one year and culminated in a hearing before, and decision by, the FINA Doping Panel. It was only when faced with the Appellant's appeal to the CAS that FINA finally chose to raise the IRMS analysis, in an effort to bolster its case in support of the FINA Doping Panel's finding that a doping offence had been committed.

169. The Panel is concerned by FINA's decision to raise new claims that significantly alter the nature of its case at this late stage of the doping control procedure. At the hearing, FINA's counsel acknowledged that it was regrettable that the IRMS analysis had not been raised earlier. He was not, however, able to offer any explanation for FINA's conduct, other than to suggest that because IRMS analysis is a relatively new procedure certain members of FINA may not have been entirely familiar with it.

170. The Panel does not consider this explanation to be satisfactory and questions whether FINA's conduct is consistent with the principle of good faith which should characterise all dealings between international sports federations and the athletes within their jurisdiction.

171. In the context of this appeal, the Panel finds that FINA's conduct gives rise to the following two specific questions: (a) Is FINA precluded from raising the IRMS analysis for the first time in this appeal, under the doctrine of estoppel? (b) Do the principles of procedural fairness preclude the Panel from relying upon the IRMS analysis in the circumstances of this case?

(a) Estoppel

172. The Appellant submits that, under the doctrine of estoppel, FINA should be precluded from raising the IRMS results for the first time at this late stage of the doping control procedure.

173. The prohibition against *venire contra factum proprium*, often compared to the common law principle of estoppel, is widely recognised under Swiss law. This prohibition is based upon the concept of abuse of right under Article 2 of the Swiss Civil Code. Where a party adopts a position contrary to one it has previously taken, its conduct may constitute an abuse of right when the other party has relied on the initial position to its detriment: P. Tuor, B. Schnyder, J. Schmid, *Das schweizerische Zivilgesetzbuch*, 11th ed., Zurich 1995, p. 57; H. Merz, *Berner Kommentar, Kommentar zum schweizerischen Zivilrecht*, Band I, Bern 1962, re: Article 2 Civil Code, notes 402-403.

174. As a strict legal matter, however, the Panel does not consider that the prohibition against *venire contra factum proprium* precludes a party from tendering new evidence or raising new arguments in an appeal arbitration proceeding of this type.

175. Under Art. R57 of the CAS Code, the Panel is expressly granted full power to review the facts and the law. It follows from this broad scope of review that the parties are not restricted to the evidence adduced, or bound by the arguments advanced, in the proceedings below. The Panel must examine the case *ab novo* and, accordingly, must

consider all of the evidence and arguments before it, including those relating to the IRMS analysis.

176. In any event, there is no evidence to suggest that FINA provided any assurances or made representations to the Appellant, express or implied, to the effect that it would not raise the IRMS analysis; nor is there any evidence that the Appellant relied upon any such assurances or representations.

177. The question at issue therefore, is one of procedural fairness: has the Appellant been given a full opportunity to address the IRMS analysis in this appeal?

(b) Procedural Fairness

178. Although this question was not specifically raised by the parties, the Panel must determine whether the principles of procedural fairness preclude it from relying on the IRMS analysis in the circumstances of this case.

179. The Swiss *Tribunal Fédéral* has held that CAS arbitrations, having their seat in Lausanne, Switzerland, are governed by, and subject to review under, the Swiss *Private International Law Act*: ATF 119 II 271. The applicability of this statute to appeal arbitration proceedings such as the present one is also expressly recognised in Rule C 10.8.3 of the FINA Constitution.

180. Pursuant to Articles 182(3) and 190(2)(d) of the Swiss *Private International Law Act*, the Panel must guarantee equal treatment of the parties and the right of both parties to be heard in adversarial proceedings. In other words, the Panel must act in accordance with the principles of procedural fairness or due process.

181. Under the Swiss *Private International Law Act*, the right to be heard in adversarial proceedings specifically guarantees each party's right to participate in the evidentiary proceedings, to rebut allegations made by the opposite party, to examine and criticize evidence adduced by the opposite party and to bring its own evidence in rebuttal before an award is rendered to its detriment: Bull. ASA 1999, 537, 541-542; Bull. ASA 1998, 118, 125; Bull. ASA 1998, 653, 658; Bull. ASA 1997, 291, 306; ATF 119 II 386, 388-390; ATF 117 II 346, 347-348; ATF 116 II 639, 642-643.

182. The Swiss *Tribunal Fédéral* has, however, consistently held that a party must immediately protest if it considers that its right to be heard has been violated, failing which the party shall be deemed to have waived the right to protest at a later stage: Bull. ASA 2000, 96, 102; ATF 119 II 386.

183. Turning to the facts of this case, the Panel must consider the following questions. First, has the Appellant been given full opportunity to address the IRMS analysis in this appeal? Second, if a different procedure had been followed, would the outcome of this appeal have been any different?

184. As regards the first question, Panel notes that the Appellant raised no objection in connection with the procedure followed in this appeal as it concerns the matter of IRMS analysis:

(a) Professor Serio, an internationally recognised authority in the field, was called by the Appellant to testify as an expert witness at the hearing and was questioned by Appellant's counsel on the IRMS issue.

(b) Appellant's counsel was given the opportunity to make, and did in fact make, extensive oral submissions in regard to the nature, reliability and applicability of IRMS analysis in this case.

(c) At the conclusion of the hearing, the Appellant's counsel expressly confirmed that his client had been provided with a full and fair hearing.

In these circumstances, the Panel is satisfied that the Appellant has been afforded a full opportunity to address the IRMS analysis.

185. Second, the Panel considers that the outcome of this appeal would have been not different even if a different procedure had been followed:

(a) As discussed above, in Section 3.4, the evidence on record clearly establishes that the IRMS analysis provides conclusive scientific evidence of a doping offence in this case. Prof. Serio and Prof. de Ceaurriz both testified that the degradation of the "B" sample could not have created the presence of a prohibited substance and thus, could not have affected the reliability of the IRMS analysis. In view of this evidence, it is highly unlikely that the Appellant would have been able to challenge the validity of the IRMS results, whether through expert evidence or otherwise, even if she had requested and been given an additional opportunity to do so.

(b) As discussed below, in Section 3.6, the IRMS analysis in this case is corroborated by the high levels of testosterone detected in the "A" and "B" samples and by the results of the longitudinal hormonal study of the Appellant. This corroborative evidence further supports the finding that the IRMS analysis provides conclusive scientific evidence of doping.

186. For all of the above reasons, the Panel has concluded that the principles of procedural fairness have been fully respected in these proceedings and, in particular, that Appellant was given a full opportunity to address all of the evidence adduced against her, including the IRMS results.

3.5.2 Interpretation of the T/E Rule and the IRMS Rule

187. The next question to be determined is whether the Appellant is correct in submitting that the IRMS Rule and IRMS analysis can only be applied to confirm a positive finding under the T/E Rule, and do not constitute an independent basis for a finding of doping.

188. The Appellant argues that, in the absence of a valid positive finding under the T/E Rule, IRMS results cannot be relied upon and the entire doping control must be declared negative. The Appellant bases this argument on two alternative interpretations of the T/E Rule: (a) the T/E Rule creates an offence applicable to any case involving the prohibited substance testosterone; or (b) the T/E Rule creates a condition precedent to any finding of the prohibited substance testosterone.

189. The Panel acknowledges that, considered in isolation, the wording of the T/E Rule lends some credence to the contention that this provision creates an offence: "*The presence of a Testosterone (T) to Epitestosterone (E) ratio greater than six (6) to one (1) in the urine of a competitor constitutes an offence* [...]" [emphasis added]. However, the overall structure of the FINA Doping Control Rules and the FINA Doping Panel Decision clearly establish that the offence at issue is that set out in FINA Rule DC 2.1(a), as submitted by FINA.

190. FINA Rule DC 2.1 creates seven different doping offences including: "*(a) the finding of a prohibited substance (DC 3.1) within a competitor's body tissue or fluids*". FINA Rules DC 3.1 and DC 3.2, read together, provide that "*prohibited substances*" in competition are identified in Appendix A to the FINA Doping Control Rules.

191. Appendix A is entitled "*PROHIBITED SUBSTANCES – IN COMPETITION*". It sets out a list of specific "*prohibited substances*" under various headings. For certain of these "*prohibited substances*", there are footnotes that establish particular quantitative limits (e.g. caffeine, cathine, ephedrine, methylephedrine), or other factors to be taken into account (e.g. salbutamol, salmeterol and terbutaline are permitted by inhaler only for the treatment of asthma), for determining a positive finding of the substance.

192. Based upon this structure, it is evident that the sole purpose of Appendix A is to define the term "*prohibited substance*" for application in the offence created under FINA Rule 2.1(a). Considering the limited purpose of Appendix A, the T/E Rule must be interpreted as a means for determining a positive finding of testosterone rather than as an offence in and of itself.

193. Further support for this interpretation is found in the FINA Doping Panel Decision. The following statement is set out in the operative paragraphs of the Decision: "*The athlete is found to have committed a doping offence under FINA Rules DC 2.1(a) and DC 9.1.1*" (FINA Rule DC 9.1.1 relates to the issue of sanction). There is no mention whatsoever of an offence under the so-called T/E Rule. For this reason as well, the Panel is not persuaded that the T/E Rule creates a separate offence under the FINA Doping Control Rules.

194. Having determined that the relevant offence in this appeal is created by FINA Rule 2.1(a), the Panel must consider whether proof of a T/E ratio greater than six (6) to one (1) is nevertheless a condition precedent to a finding of the prohibited substance testosterone.

195. In the opinion of the Panel, there is no basis for this interpretation of the FINA Doping Control Rules. Testosterone is one of those prohibited substances that are produced naturally by the body. For obvious reasons, the prohibition against testosterone must therefore be interpreted as a prohibition against *exogenous* testosterone. Prior to the development of IRMS analysis, it was not, however, possible to differentiate between endogenous and exogenous testosterone.

196. Faced with this scientific limitation, FINA introduced the T/E Rule under which a T/E ratio greater than six (6) to one (1) constitutes presumptive evidence of an exogenous administration of testosterone. Under the express wording of the T/E Rule, this presumption may be rebutted with evidence that the elevated T/E ratio is "*due to a physiological or pathological condition*".

197. Viewed within this historical and scientific context, it is clear that the T/E Rule is properly understood as an evidentiary rule which recognises a particular scientifically accepted procedure as a means of making a finding of doping, while at the same time acknowledging its limitations. The provision creates a rebuttable factual presumption; it is thus fundamentally evidentiary in nature.

198. The Panel also considers that the IRMS Rule is properly understood as an evidentiary rule, enacted in order to establish that IRMS analysis is scientifically recognised as a conclusive evidentiary method for proving doping. This is clear from the express wording of this provision:

> *[Evidence obtained from metabolic profiles or isotopic ratio measurements may be used to draw definitive conclusions regarding anabolic androgenic steroids.]* [emphasis added]

199. The Panel accepts FINA's submission that the purpose of the T/E Rule and the IRMS Rule is to avoid the necessity of proving the scientific reliability of these evidentiary methods in every doping case involving testosterone. The T/E Rule and the IRMS Rule are, in essence, alternative and non-exclusive evidentiary rules. FINA is free to rely upon other scientific methods to prove a doping offence, subject to demonstrating a consensus in the international scientific community that such methods establish the presence of exogenous testosterone with a high degree of certainty.

200. Given the limited evidentiary purpose of the T/E Rule and the IRMS Rule, the Panel does not believe that there is any reason to conclude that a T/E ratio greater than six (6) to one (1) must be proven in every case in order to make a positive finding of doping. Rather, an elevated T/E ratio must be viewed as one of many potential evidentiary methods for proving an exogenous administration of testosterone.

201. Beyond a strict literal reading of the T/E Rule, the Appellant has offered little justification for giving precedence to one evidentiary method, the T/E ratio, over all other evidentiary methods that are proven to be scientifically reliable. In particular, the Panel finds that there is no good reason to give the T/E ratio precedence over IRMS analysis, a scientific method which provides direct and conclusive evidence of an exogenous administration of testosterone.

202. Moreover, the Panel does not accept the Appellant's argument that the T/E Rule is rendered superfluous if it is interpreted as a purely evidentiary rule. Just as the existence of the T/E Rule in the FINA Doping Control Rules does not require that an elevated T/E ratio be proven in each case of alleged doping, the existence of the IRMS Rule does not necessitate direct evidence through IRMS analysis in every case. This is made clear by the use of permissive wording in relation to the IRMS Rule. IRMS analysis is but one possible evidentiary method for proving doping, and the IRMS Rule accordingly provides that this method *"may be used"* rather than *"shall be used"* to draw definitive conclusions of doping. Therefore, notwithstanding the introduction of the IRMS Rule, it is still possible to make a positive finding of doping solely in reliance upon the T/E Rule. Indeed, as the submissions of the parties in this case reveal, it is apparent that the T/E Rule will continue to be the primary evidentiary basis for finding the exogenous administration of testosterone until IRMS analysis becomes more widely available.

203. In light of these considerations, the Panel is of the opinion that the T/E Rule and the IRMS Rule are to be interpreted as alternative and non-exclusive evidentiary rules, both of which have full effect and are equally applicable to the present case.

204. The Panel does not believe that any weight should be placed on the fact that IRMS analysis is, in practice, used to confirm the finding of an elevated T/E ratio. Prof. de Ceaurriz testified that IRMS analysis is not systematically applied as part of the primary analysis of samples for purely administrative and financial reasons, rather than as a result of any controversy concerning its appropriateness or utility. The Panel is of the opinion that current practice sheds little if any helpful light on the proper interpretation of the T/E Rule or the IRMS Rule.

205. Finally, one very practical consideration weighs against the Appellant's interpretation of the T/E Rule and the IRMS Rule. If one were to accept the Appellant's submission, FINA would be required to prove doping through the indirect and rebuttable evidence of an elevated T/E ratio in every case, even though more sophisticated and conclusive scientific methods of proof have been developed. In effect, FINA would be precluded from relying upon the best scientific evidence of doping available at the time of the doping control procedure, at least until such evidence is formally recognised through an amendment to the FINA Doping Control Rules. Given the administrative complexities and undoubted delays associated with enacting formal amendments, and the pace at which science and technology evolve, it is clear that the Appellant's interpretation of the FINA Doping Control Rules would unduly hinder FINA's efforts to combat the problem of doping in sport.

206. For all of the above reasons, the Panel finds that it could rely upon the IRMS Rule and IRMS analysis in finding that the Appellant committed a doping offence, without concluding that the Appellant's T/E ratio was greater than six (6) to one (1).

3.5.3 Retroactive Application of the IRMS Rule

207. The Panel must next consider whether it can apply the IRMS Rule given that it was not in force on 24 January 1999, the date of the doping control at issue in this case.

208. Under Swiss law, the prohibition against the retroactive application of law is well-established. In general, it is necessary to apply those laws, regulations or rules that were in force at the time that the facts at issue occurred: B. Knapp, *Précis de droit administratif*, Basle 1991, p. 116; ATF 110 V 254; ATF 99 V 200.

209. This general principle is, however, subject to several exceptions, including an exception for laws or rules that are procedural in nature. In the absence of an express provision to the contrary, laws and rules relating to procedural matters apply immediately upon entering into force and regardless of when the facts at issue occurred: B. Knapp, *Précis de droit administratif, supra*, pp. 117 and 123; ATF 110 V 330, 332.

210. It is common ground that the IRMS Rule came into force on 1 June 1999, some six months after the doping control at issue in this case. The only question to be determined is whether the IRMS Rule is properly characterised as a substantive provision or a procedural provision.

211. As discussed above in Section 3.5.2, the Panel has concluded that the IRMS Rule is a purely evidentiary or procedural rule, enacted in order to establish that IRMS analysis is scientifically recognised as a conclusive evidentiary method for proving the exogenous administration of testosterone.

212. The fundamental evidentiary nature of the IRMS Rule is not altered by the fact that this provision precludes athletes from raising a defence based upon evidence of a physiological or pathological condition. The T/E Rule only permits such a defence because an elevated T/E ratio does not constitute direct and conclusive evidence of the exogenous administration of testosterone. There may be other physiological or pathological reasons for an elevated T/E ratio. By contrast, IRMS analysis provides direct evidence of the exogenous administration of testosterone and, accordingly, there is no place for such a defence under the IRMS Rule.

213. The IRMS Rule and the T/E Rule are alternative and non-exclusive evidentiary rules, as discussed above. The T/E Rule provides for a specific defence because of the scientific limitations of this evidentiary method. There is no reason to provide for this defence in the context of a different evidentiary method which is not subject to such limitations. In short words, the IRMS Rule cannot be said to deprive athletes of a defence because there is simply no scientifically valid defence to IRMS analysis .

214. The Panel is therefore satisfied that the IRMS Rule is an evidentiary or procedural rule and accordingly, it may be applied in this case notwithstanding the fact that the doping control at issue occurred before this provision came into force.

215. In any event, the Panel is entitled to consider FINA's enactment of the IRMS Rule as evidence of a consensus in the international scientific community regarding the reliability of IRMS analysis. This is strictly a question of considering the evidence on record; it does not involve application of the IRMS Rule *per se*, as the Appellant was free to adduce expert evidence to demonstrate that there are doubts as to the scientific reliability of IRMS analysis.

216. Moreover, it should be emphasised that the Panel is entitled to rely on the IRMS analysis in this case without placing any weight whatsoever on the IRMS Rule. For the reasons set out above in Section 3.4, the Panel considers that there is sufficient evidence on record, apart from the IRMS Rule, to establish that the IRMS analysis provides conclusive evidence of doping in this case.

3.5.4 No Discrimination between Athletes Due to Limited Availability IRMS Analysis

217. Based upon Prof. de Ceaurriz's evidence that IRMS analysis is only carried out by seven or eight of the twenty-seven laboratories accredited by the IOC, the Appellant submits that any reliance on IRMS analysis would result in discrimination between athletes. The Appellant maintains that all athletes must be treated equally and that it is unfair that she be singled out for sanction in reliance on a method of analysis that is not universally applied.

218. The Panel has great difficulty accepting this submission. Prof. de Ceaurriz has testified that the equipment required for IRMS analysis is quite costly and, for this reason, only certain IOC-accredited laboratories are presently capable of performing this analysis. The decision as to whether or not an athlete will be subjected to IRMS analysis depends entirely upon the laboratory that is engaged to analyse the samples from a

given competition. While it is true that the application of IRMS analysis is therefore quite random at the present time, this hardly constitutes discrimination. There is no question of singling out the Appellant as the specific identity of an athlete is not a factor in determining whether he or she will be subjected to IRMS analysis.

219. Moreover, the Panel does not consider it unfair that FINA has been able to provide conclusive evidence of doping against the Appellant while many other athletes who may have engaged in doping may have avoided detection. The question of whether or not other athletes have escaped sanction due to a lack of evidence is simply not relevant to the merits of this case.

3.5.5 Conclusions regarding the IRMS Analysis

220. Based upon the above analysis, the Panel has concluded that: (a) the IRMS analysis provides conclusive scientific evidence of an exogenous administration of testosterone and; (b) the Panel is entitled to rely upon the IRMS analysis as an independent and sufficient basis for finding that the Appellant committed a doping offence under FINA Rule DC 2.1(a).

3.6 The T/E Ratio and Longitudinal Hormonal Study are Corroborative Evidence

221. In addition to the IRMS analysis, the Panel considers that both the Appellant's elevated T/E ratio and longitudinal study provide corroborative evidence of an exogenous administration of testosterone.

3.6.1 The Appellant's Elevated T/E Ratio

222. As discussed above in Section 3.4, the Appellant has made a persuasive case that the "B" sample was affected by degradation and has thereby cast doubt on the reliability of the elevated T/E ratios found by the Laboratory.

223. Faced with this evidence, the Panel would be hesitant to find that the Appellant committed a doping offence exclusively in reliance on the T/E Rule. Nevertheless, the Panel considers that the finding of a high testosterone level in both the "A" and "B" samples is entitled to some corroborative weight in support of the IRMS analysis.

224. In this regard, the Panel relies upon the following excerpt from Prof. de Ceaurriz's written expert report dated 2 June 2000 (Respondent's Exhibit R8):

> The abnormally elevated variability between the tests (sample A vs. sample B) of the testosterone and epitestosterone measures has little influence on the variability of the T/E support since this has always been found superior to 6 (T/E = 6.9 for sample A and 7.9 for sample B). [translated from French]

225. More importantly, it does not appear that the high level of testosterone found in the "A" and "B" samples can be explained by the Appellant's physiological or pathological condition. While the Panel accepts that the Appellant suffers from PCO-Syndrome, Prof. Serio and Prof. de Ceaurriz both testified that it is very unlikely that this condition could account for the high level of testosterone detected by the Laboratory. The only other expert evidence on record regarding the effect of PCO-Syndrome on T/E ratios is that of Dott. Bonifazi and Prof. Gärtner. However, even accepting their evidence on the issue in its entirety, these experts merely take the

position that PCO-Syndrome is a *possible* cause for the Appellant's elevated level of testosterone.

226. In the opinion of the Panel, and with the greatest respect, the expert evidence of Prof. Serio and de Ceaurriz is more definitive and should for that reason be preferred to that Dott. Bonifazi and Prof. Gärtner. Such evidence essentially lays to rest one of the Appellant's main arguments in this appeal and demonstrates that the elevated T/E ratios found by the Laboratory do, in fact, constitute reliable evidence of an exogenous administration of testosterone.

3.6.2 The Appellant's Longitudinal Hormonal Study

227. Finally, the Panel accepts FINA's submission that the longitudinal hormonal study initiated by the Italian Swimming Federation provides further corroborative evidence of the IRMS analysis.

228. A longitudinal hormonal study involves the comparison of an athlete's T/E ratio both before the finding of an elevated T/E ratio (to the extent that such data is available) and for a period of several months afterwards. The purpose of such a study is to determine whether an athlete's elevated T/E ratio recurs over time, thus indicating that he or she has a naturally elevated T/E ratio due to some physiological or pathological condition.

229. In this case, it is common ground that the elevated T/E ratio detected on 24 January 1999 did not recur over the period of the Appellant's longitudinal hormonal study. For the reasons set out above in Section 3.6.1, the Panel does not accept the Appellant's submission that the sole finding of an elevated T/E ratio on 24 January 1999 can be explained by her physical condition. Accordingly, the Panel finds that the longitudinal hormonal study constitutes additional evidence that the Appellant's elevated T/E ratio was due to an exogenous administration of testosterone.

3.7 The Sanction

230. FINA Rule DC 9.1.1 establishes a two-part sanction for a first offence involving anabolic agents: a suspension of *at least* four years; a cancellation of the athlete's results for the previous six months.

231. Unfortunately, the Panel considers that it has little, if any, margin of discretion in determining the sanction to be applied in this case, for the following reasons.

232. A suspension of *more* than four years is clearly not called for and is explicitly rejected.

233. At the same time, the Panel does not consider that, in the present case, there exist grounds under FINA Rule DC 9.10 – which drastically limits the circumstances in which the minimum four-year suspension may be lessened, and imposes on the athlete a particularly heavy burden of proof – to shorten the minimum suspension period provided by Rule DC 9.1.1.

234. The Panel is aware that a four-year suspension is in effect equivalent to lifetime ban for the Appellant (which is the sanction established for a *second* offence), given her age and the unlikelihood of her competing again after such a long time. The Panel is concerned that, as a result, there is effectively no distinction between a first and

second offence. Moreover, the Panel is both aware and concerned that the same offence is treated quite differently (often more leniently) in different sports, under the rules of various international federations.

235. The Panel having concluded that the Appellant has committed a doping offence under FINA Rule DC 2.1(a), however, the following sanction (identical to the sanction imposed by the FINA Doping Panel) is applicable under the FINA Rules and is for that reason hereby imposed:

(a) The Appellant shall be suspended for four (4) years commencing on 25 March 2000.

(b) All results achieved by the Appellant within a period of six (6) months before 24 January 2000 shall be cancelled.

4. COSTS

236. In accordance with Art. R65.1 and Art. R65.2 of the CAS Code, appeal arbitration proceedings are free, apart from the fee of CHF 500 paid by the Appellant upon submission of the Statement of Appeal which is retained by the CAS. Otherwise, the fees and costs of the arbitrators, together with the costs of the CAS are borne by the CAS.

237. Pursuant to Art. R65.3 of the CAS Code, the Panel has jurisdiction to allocate the legal costs and expenses incurred by the parties in connection with the appeal arbitration proceeding:

> The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.

238. In this appeal, the Appellant has been unsuccessful in seeking to overturn the FINA Doping Decision. The Appellant has, however, shown herself to be most co-operative and has facilitated the just and efficient disposition of this appeal.

239. By contrast, while FINA has been successful on the merits of this appeal, its conduct has been questionable. As discussed above, in Section 3.5.1, the Panel is deeply troubled by FINA's decision to raise the IRMS analysis for the first time in this appeal to the CAS. Although the Appellant was provided with a full opportunity to address the IRMS analysis in this appeal, one wonders whether the Appellant would have filed an appeal at all if FINA had given due consideration to her case and raised the IRMS analysis in a timely manner.

240. Considering these factors, and in the absence of any evidence in regard to the financial resources of the parties, the Panel has concluded that each party should bear its own legal costs and expenses incurred in connection with this appeal arbitration proceeding.

ON THESE GROUNDS

The Court of Arbitration for Sport hereby rules :

1. The Appeal filed by Viviana Susin on May 4, 2000 is dismissed.

2. The decision issued by the FINA Doping Panel on March 25, 2000 is confirmed.

3. This award is rendered without costs, except for the Court Office fee of CHF 500.- (five hundred Swiss francs) already paid by the Appellant and which is retained by the CAS.

4. Each Party shall bear its own costs.

Done in Lausanne, 19 October 2000

THE COURT OF ARBITRATION FOR SPORT

L. Yves Fortier, C.C., Q.C.
President of the Panel

Massimo Coccia
Arbitrator

Denis Oswald
Arbitrator

David P. Roney
Ad hoc Clerk

TAB 15

ARBITRAL AWARD

rendered by

THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. L. Yves **Fortier**, C.C., Q.C., Barrister & Solicitor, Montreal, Canada

Arbitrators: The Hon. Robert J. **Ellicott**, Q.C., Judge & Barrister, Sydney, Australia
Mr. Juan **Vives R. de Hinojosa**, Attorney-at-Law, Barcelona, Spain

Ad hoc Clerk: Mr. Antonio **Rigozzi**, Attorney-at-Law, Geneva, Switzerland

in the appeal arbitration proceeding between

INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS (IAAF)
17 Rue Princesse Florestine; BP 359 – MC 9800; Monaco

Represented by Mr. Mark Gay and Denton Wilde Sapte; Five Chancery Lane, Clifford's Inn; London; United Kingdom

Appellant

and

CONFEDERAÇÃO BRASILEIRA DE ATLETISMO (CBAt)
Avenda Sete de Setembro; 874-4 andar; 69005-140-Manaus; Brazil

Represented by Me Roberto Gesta de Melo

and

MS. FABIANE DOS SANTOS (Brazil)

c/o Juan Alvarez Mendizabal 39 3° Derecha; Madrid; Spain

Represented by Mr. Joseph Maria Mir; De Vargas - Mir & Lazuen; c/Marià Cubì, 10.70; 08006-Barcelona; Spain

Respondents

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I FACTS

1. THE PARTIES

1. The Appellant, the International Association of Athletics Federations ("IAAF"), is the international federation governing the sport of athletics world-wide. IAAF has its seat in Monaco.

2. Confederação Brasileira de Atletismo ("CBAt") is the national federation governing the sport of athletics in Brazil. It is recognized as a Sporting Administration National Entity by the Brazilian Federal Law No. 9.615/98 (generally referred to as "Lei Pelé"). CBAt has its seat in Manaus, Brazil. CBAt is a Member Federation of IAAF.

3. Ms. Fabiane dos Santos (hereinafter also referred to as the "Respondent" or the "Athlete"), born on 30 May 1976, is a Brazilian competitive athlete domiciled in Spain. Ms. dos Santos is licensed and holds a federated athlete permit issued by CBAt. In 1995, when she was 18 years old and had just begun to compete in national and regional championships, Ms. dos Santos tested positive for nandrolone and was suspended for 4 years under the IAAF regulations in force at that time. On 6 June 1997, the IAAF Council approved a request by Ms. dos Santos for early reinstatement due to "exceptional circumstances" within the meaning of IAAF Rule 60.8 [currently 60.9]. Ms. dos Santos then became one of the world's best athletes over the distance of 800 meters. On 6 May 2001, Ms. dos Santos won the 800 meter race in 2:00:56 at the IAAF Grand Prix Meeting held in Rio de Janeiro, which was the best performance up to that point in the year and made her a leading contender for the title at the IAAF World Championships which were to be held later that year in Edmonton.

2. THE IAAF DOPING CONTROL RULES

4. The IAAF Doping Control Rules formally applicable to this appeal are those contained in Division III of the IAAF Handbook ("IAAF Rules"), as supplemented by the IAAF Procedural Guidelines for Doping Control (the "IAAF Procedural Guidelines").

5. IAAF Rule 55 provides the following in respect of "doping":

> 1. Doping is strictly forbidden and is an offence under IAAF Rules.
> 2. The offence of doping takes place when either:
> (i) a prohibited substance is present within an athlete's body tissues or fluids; or
> (ii) an athlete uses or takes advantage of a prohibited technique; or
> (iii) an athlete admits having used or taken advantage of a prohibited substance or a prohibited technique. (See also Rule 56.)
> 3. Prohibited substances include those listed in Schedule 1 to the "Procedural Guidelines for Doping Control". This list shall be constantly reviewed by the Anti-doping Commission and may be added to or amended by them. Such addition or amendment must be approved by the Council, and shall come into force three months from the date of such approval.
> 4. It is an athlete's duty to ensure that no substance enters his body tissues or fluids which is prohibited under these Rules is present in his body tissues or fluids. Athletes are warned that they are responsible for all or any substance present in their body. [...]
> 6. The expression "prohibited substance" shall include a metabolite of a prohibited substance.

Part I of Schedule 1 of the IAAF Procedural Guidelines expressly lists "testosterone [...] and chemically or pharmacologically related compounds and precursors" as a prohibited anabolic agent and further states:

> [A] sample will be deemed to be positive for testosterone where either the ratio in urine of testosterone to epitestosterone, or the concentration of testosterone in urine, so exceeds the range of values normally found in humans as not to be consistent with normal endogenous production.
>
> A sample will not be regarded as positive for dihydrotestosterone or testosterone where an athlete proves by clear and convincing evidence that the abnormal ratio or concentration is attributable to a pathological or physiological condition.
>
> Evidence obtained from metabolic profiles and/or isotopic ratio measurements may be used to draw definitive conclusions.

6. IAAF Rule 60 provides the following in respect of sanctions for doping offences:

> 1. For the purpose of these Rules, the following shall be regarded as "doping offences" (se also Rule 55.2):-
> (i) the presence in an athlete's body tissues or fluids of a prohibited substance;
> (ii) [...]
> 2. If an athlete commits a doping offence, he will be ineligible for the following periods:
> (a) for an offence under Rule 60.1(i) or 60.1(iii) above involving the substances listed in Part I of Schedule 1 of the "Procedural Guidelines for Doping Control" or, for any of the other offences listed in Rule 60.1:-
> (i) first offence – for a minimum of two years from the date of the hearing at which it is decided that a Doping Offence has been committed. When an athlete has served a period of suspension prior to a declaration of ineligibility, such a period of suspension shall be deducted from the period of ineligibility imposed by the relevant Tribunal;
> (ii) second offence – for life

3. THE RIO DE JANEIRO DOPING CONTROL AND THE ANALYSIS OF THE "A" SAMPLE

7. After her victory in the 800 meter run at the IAAF Grand Prix Meeting held in Rio de Janeiro on 6 May 2001, Ms. dos Santos underwent and duly completed an in-competition doping control and thereafter signed the 'IAAF Doping Control Form', confirming that she was "satisfied with the sample collection procedure and agree[d] that all disputes howsoever arising from doping control shall be resolved in accordance with IAAF Arbitration Rules" (Exhibit A-7). The urine collected was placed in two sealed bottles (the "A" and "B" samples), respectively coded as "A072048" and "B072048" (collectively "the Rio de Janeiro sample").

8. The Rio de Janeiro sample was then dispatched for analysis to the Doping Control Laboratory of the INRS–Institut Armand-Frappier, an IOC-accredited laboratory in Montreal, Canada (the "Montreal Laboratory"), where it arrived on 11 May 2001.

9. The Montreal Laboratory carried out the analysis of the "A" sample between 15 May and 25 May 2001 and reported the following results in its "Certificate of Analysis" dated 25 May 2001 (Exhibit A-9, p. 2 = Exhibit R-3):

> The following samples were analyzed in full menu screening:
>
Sample	Result	Comments
072048	**Positive:**	**Testosterone (T/E Ratio greater than 25)**

10. The Analysis Summary ("01DV0580.xls Sommaire A") sets out the following details (Exhibit A-9, p. 24 = Exhibit R-2):

> **CONFIRMATION T/E**
>
> [...] Code Athlete 72408 PH: 4.4 [...] Density 1.017 [...]
>
Screening	**T/E curve**	**T/E direct**	**[T] ng/ml**	**[E] ng/ml**	**[...]**
G+L	23.24	44.02	45.6	3	[...]
Confirmation	**T/E curve**	**T/E direct**	**[T] ng/ml**	**[E] ng/ml**	**[...]**
[...] average	37.82 *	83.18	43.1	1.9	[...]
>
> [...]
>
> **Notes** [...] IRMS: A/APT =1.23, Et/PT=1.25 (Adiols/PT~1.2).
>
> [under an asterisk apparently referring to T/E curve results, the following handwritten statement is added:]
>
> * *Erroneous value because T/E 25 beyond possibility of analysis of MSD 8.*

Result: *(+) Testosterone (T/E Ratio greater than 25)*

[translation from French]

11. On 11 June 2001, following a request by the IAAF, Professor Christiane Ayotte, Director of the Montreal Laboratory, summarized the results of the "A" sample analysis as follows (Exhibit A-9, p. 1):

> Further to your request regarding the above mentioned test result, please find the following information that was needed.
>
> - The specific gravity of the specimen: 1.017 (pH: 4.4)
> - The T/E value was established at 38 (very high value, estimation on three aliquots).
> - The concentration of testosterone was estimated at 43 ng/mL (limit in female athletes' population: 99% below 40 ng/mL)
> - We have carried out the GC/IRMS analysis of the specimen and found that the $\delta\ ^{13}C/^{12}C$ ‰ values of the androgens metabolites, androsterone and etiocholanolone as well as the androstandiols were consistent with a synthetic (as opposed to a natural) origin. The value of androsterone and etiocholanolone were –31.26 and –31.88 respectively, whereas cholesterol and pregnanetriol were respectively measured at – 25,74 and –25,33. The ratios A/Pgtriol and Etio/Pgtriol were 1.23 and 1.25 showing their different isotopic content.
> - The other test results from 1995 to 1997 were "normal", T/E values raging from 0,7 to 1,1.

4. FURTHER INVESTIGATIONS BY THE IAAF

12. The IAAF states that it requested the information reported in the last two bullet-points set out above (i.e., the IRMS (Isotope Ratio Mass Spectrometry) analysis and the results from previous tests) in "order to prove that the elevated T/E ratio was due to the exogenous administration of testosterone" (Appeal Brief, p. 8). Consistent with its practice at that time, the IAAF was seeking to compile a longitudinal study by collecting the steroid profile data from the Athlete's previous tests and at least one subsequent test result. Accordingly, the IAAF thereafter attempted to arrange an unannounced out-of-competition test on Ms. dos Santos.

13. After some difficulties in locating the Athlete, the Real Federación Española de Atletismo ("RFEA") conducted an out-of-competition test on 21 June 2001 in Madrid, Spain, where Ms. dos Santos was living. Because of a medical appointment that could not be rescheduled, the sample was taken about three hours after the Athlete was notified that she was required to undergo a doping control, (the "Madrid sample"). The Athlete was not under observation during this period of three hours (Exhibit A-10, pp. 3-4).

14. The Madrid sample was dispatched for analysis to the Doping Control Laboratory of the Higher Sports Council in Madrid, an IOC-accredited laboratory (the "Madrid Laboratory"), where it arrived on 22 June 2001. The Madrid Laboratory carried out the analysis between 27 June 2001 and 12 July 2001 and reported the following results (Exhibit R-4, p. 2):

> Following procedures: PNT-DE-03, PNT-DE-05, the above mentioned samples have been analysed in this laboratory without any substance being detected in them either qualitatively or quantitatively which could give rise to a positive doping result.

The attached "Steroid Profile" indicates that the specific gravity of the sample was 1.003 gr./l and that its pH was 6.8.

15. In a letter to the IAAF dated 13 July 2002, Ms. Cecilia Rodriguez Bono, the Director of the Madrid Laboratory, interpreted the results of the Madrid sample as follows (Exhibit R-4):

> We inform [that the sample] has a ratio T/E which could be upper six
>
> We communicate to such respect:
>
> 1°) The increase of this ratio could be due to the low value of epitestosterone.
>
> 2°) The concentration level of Eitestosterone is below the quantitation limit of our scope of our accredited method. For this reason is not possible to give a value of quantitation.
>
> 3°) We also indicate that the value of density could influence in the values of endogenous anabolic steroids found.

16. On 19 June 2002, the IAAF requested Professor Peter Hemmersbach, Scientific Director of the IOC-accredited Doping Analysis Section of Aker University in Oslo (the "Oslo Laboratory"), to examine the analytical evidence from the Montreal laboratory and to provide an expert opinion. By fax dated 19 July 2001, Professor Hemmersbach informed the IAAF that the results of the IRMS analysis on the Rio de Janeiro sample, together with the results of the previous tests on the Athlete and those of the Madrid test, supported the following conclusion (Exhibit A-12):

> [T]he ratio of testosterone to epitestosterone in sample 072048 [i.e., the Rio de Janeiro sample] clearly exceeds the range of values normally found in humans and that the evidence obtained from metabolic profiles and isotope ratio measurements clearly indicates the administration of a doping agent. There is no convincing evidence that the abnormal [T/E] ratio is attributable to a pathological or physiological condition.

17. About the same time, the IAAF also decided to send an aliquot of the Madrid sample to the IOC-accredited Laboratory of the Institute of Biochemistry of the Deutsche Sportschule Köln (the "Cologne Laboratory") for IRSM analysis. On 30 July 2001,

Professor Wilhelm Schätzer, the Head of the Cologne Laboratory, informed the IAAF that, due to the low density of the urine and the low concentration of endogenous reference compounds, "[t]he sample may be considered suspicious for application of exogenous androgenic steroids but a definitive result cannot be given."

5. PROVISIONAL SUSPENSION OF MS. DOS SANTOS

18. By fax dated 1 August 2001, the IAAF informed the CBAt that the positive finding of doping in the Rio de Janeiro sample was "related to application of exogenous androgenic steroids and not to a pathological or physiological condition" and ordered the CBAt to inform the Athlete of the positive result and seek her explanation within 2 days. Failing an adequate explanation within this time limit, the IAAF advised that the test on the Rio de Janeiro sample would be regarded as positive and the Athlete would be suspended, pending a hearing of her case (Exhibit A-7).

19. On 4 August 2001, Ms. dos Santos provided the following written explanation, which was forwarded by fax on the same day to the IAAF (Exhibit A-14, p. 13):

> [...] [I]n the year 1995, in the Brazilian tournament, I was tested by Dr. Osmar. The results showed that the levels of testosterone found in my blood and urine were higher than normal and equal to the level of testosterone/epitestosterone found modified by a block of sintese alphahidroxide progesterone and a 3-betahydroxide dehydrogenized steroid probably produced by congenital adrenal hyperplasia. The altered endrolcline is of a genetic character.

The medical report of Dr. Osmar was attached to the written explanation of Ms. dos Santos. This report had been prepared, as indicated by the Athlete, in connection with her positive test for nandrolone in 1995.

20. Upon receipt of the Athlete's explanation, the IAAF informed the CBAt by fax dated 4 August 2001 that her explanation could not "be considered acceptable and, consequently the test must be regarded as positive". The IAAF therefore requested the CBAt to "advise the Athlete that she is provisionally suspended pending a hearing" according to IAAF Rule 58.1 and paragraph 2.54 of the IAAF Procedural Guidelines, and to "arrange a hearing date as soon as possible". The IAAF also requested the CBAt to advise whether the Athlete wished to avail herself of "her right to request for a B sample analysis" (Exhibit A-14, p. 20).

6. THE ANALYSIS OF THE "B" SAMPLE

21. On 5 August 2001, in accordance with a request by Ms. dos Santos, the Montreal Laboratory opened the Rio de Janeiro "B" sample for analysis in the presence of Professor Ayotte, Director of the Montreal Laboratory, Mr. Thomaz Paiva of the CBAt and Professor Jari da Nóbrega Cardoso acting as representative of the Athlete (Exhibit A-9, p. 52). Professor Cardoso was charged to represent the Athlete by Mr. Roberto Gesta de Melo, the President of the CBAt, who was duly authorized to do so by Ms. dos Santos (Exhibit T-1)[1]. Professor Ayotte and the Brazilian representatives "agreed to use 3 aliquots of u.[rine] s.[ample] 072048B, 1 aliquot of A [sample] [and to use only two] STD T/E [i.e T/E standards] at 6:1 and 25:1 spiked in urine" (Exhibit A-9, p. 52) instead of the ordinary full calibration curve (obtained with 8 urinary standards and 2 quality control samples), which was used for the analysis of the Rio de Janeiro "A" sample in May 2001 (Exhibit A-9, paras. 17, 22 and 25. pp. 6-9). According to Professor Ayotte, this change in the confirmation procedure was agreed "in the light of the very high T/E ratio measured in the 'A' sample" (Professor Ayotte's Written Statement, Exhibit A-3, para. 22, p.8).

22. The Montreal Laboratory carried out the analysis of the Rio de Janeiro "B" sample between 5 August and 6 August 2001 and reported the following results in its "certificate of analysis – A sample confirmation" dated 6 August 2001(Exhibit A-9, p. 53 = Exhibit R-9):

> The following sample was analysed for confirmation only:
>
> | Sample | Result | Comments |
> |---|---|---|
> | **072048B** | **Positive** | **Testosterone (T/E ratio greater than 25)** |

23. The Analysis Summary ("01DV0580B.xls Sommaire A") dated 6 August 2001 indicates the following specifications (Exhibit R-9):

> **CONFIRMATION T/E**
>
> [...] Code Athlete 72408B PH: 4.4 [...] Density 1.016 [...]
>
A	T/E curve	T/E direct	[T] ng/ml	[E] ng/ml	[...]

[1] Professor Cardoso, who happened to be in Montreal at that time in order to witness the opening of another B sample, was asked to attend the analysis of Ms. dos Santos's B sample by the CBAt. In the course of a telephone conversation she had with Mr. Gabriel Dollé of the IAAF, Ms. dos Santos apparently accepted this arrangement in order to have the counter-analysis carried out before the beginning of the upcoming World Championships in Edmonton (Exhibit A-14, p. 87).

G+L	23.24	44.02	45.6	3	
Confirmation	**T/E curve**	**T/E direct**	**[T] ng/ml**	**[E] ng/ml**	**[...]**
[...]					
average	79.31	73 .04	56.4	0.9	[...]
[...]					

Notes
Parameters evaluated against results obtained on standards T/E 6 and 25 only. *

STD	real T/E		direct T/E	difference
6	6.54	7.53	15.1%	
25	27.35		26,27	-4.0%

[the asterisk, the following handwritten statement is added:]
As agreed with the Brazilian representatives

Result: *(+) T/E Ratio greater than 25*

[translation from French]

24. On the same day, the IAAF informed the CBAt that the analysis of the "B" sample confirmed the finding of the "A" sample (Exhibit A-14, p. 21).

25. On 6 and 7 August, 2001, the Montreal Laboratory conducted an IRMS analysis on the "B" sample. Professor Ayotte found the results of this analysis to be "consistent with the administration of an external source of testosterone" (Exhibit A-3, para 27, p. 9).

26. Ms. dos Santos received complete analytical information on 28 September 2001, following repeated requests by both the Athlete and the CBAt (Exhibit A-14, pp. 23-32). This delay was due, in part, to erroneous information regarding the address of the Athlete and to air traffic problems following the events of 11 September 2001 (Exhibit A-14, p. 32 and 44).

27. On 31 October 2001, Ms. dos Santos submitted a document to the IAAF that set out a detailed explanation of her position in accordance with the procedure provided under Articles 2.55 and 2.56 of the IAAF Procedural Guidelines, which allows an athlete "to raise any matter he feels relevant" before the IAAF prior to a hearing. In this document, the Athlete argued that the Montreal Laboratory's analysis should be nullified due to the significant deviation between the results of the analysis of the "A" sample and of the "B" sample. The Athlete also alleged that her "right of defence" had been violated because she had been suspended without having had the opportunity to prepare her case, in particular, due to the delay in delivery of the documentation relating to the analysis.

Ms. dos Santos concluded by requesting that her suspension be lifted and her eligibility to compete be reinstated (Exhibit A-14, pp. 48 to 72).

28. The CBAt also filed a written submission with the IAAF dated 14 November 2001. Relying extensively on an expert opinion by Professor Cardoso (the Athlete's representative at the analysis of the "B" sample, as noted above), the CBAt contested the certainty of the tests carried out by the Montreal Laboratory and concluded by requesting the IAAF to carry out additional tests in order "to reach a real conclusion whether the athlete committed the doping infraction or not" (Exhibit A-14, pp. 74 to 82).

29. On 10 December 2001, the IAAF responded to the issues raised by both the Athlete and the CBAt. According to the IAAF, Professor Cardoso misunderstood the results of the analysis carried out by the Montreal Laboratory, which showed that both the "A" sample and the "B" sample had a T/E ratio in excess of 25. The IAAF also pointed out that the IRMS analysis proved the synthetic origin of the testosterone metabolites; moreover, a longitudinal study based on previous known tests of Ms. dos Santos indicated a considerably lower T/E ratio.

30. In the IAAF's view, the combination of the above facts provided "sufficient evidence to conclude to a *prima facie* adverse finding for testosterone in accordance with IAAF Rules". Nevertheless, the IAAF had decided to await the results of the additional tests carried out by the Madrid Laboratory on the Madrid sample before declaring a positive finding of doping. The Madrid Laboratory found "an elevated, but not confirmed, T/E value". The IAAF did not, however, declare a finding positive of doping and suspended the Athlete until after Professor Hemmersbach reviewed the results of the analysis of both the Rio de Janeiro "A" and "B" samples and the Madrid "A" and "B" samples and concluded "that a doping offence had been committed", and after the Cologne Laboratory found that the Madrid sample "may be considered suspicious for the application of exogenous androgenic steroids". The IAAF concluded that "there is nothing in either the athlete's submission or that of [her] federation that, at this stage, leads the IAAF to a conclusion that a doping offence has not been committed". The IAAF therefore requested the CBAt to convene a hearing "as soon as possible" in order

to provide the Athlete with a full opportunity to exercise her rights (Exhibit A-14, pp. 83 to 89).

7. HEARING AND DECISION OF THE CBAt SPORTS HIGH COURT

31. Following a further request by the IAAF, "as a matter of urgency", (Exhibit A-14, p. 90), the CBAt Sport High Court eventually convened a hearing in Manaus City on 11 March 2002. In the course of this hearing, testimony was given by Dr. Sebastião Ferreira (Expert for the CBAt) and by Dr. Ovìdio Gómez Bellver (Expert for the Athlete). Dr. Gómez Bellver made a "technical exposition" in which he emphasized the difference in the results between the Rio de Janeiro "A" sample and the "B" sample, which allegedly raised doubts "about the *precision* and the *accuracy* of the method used" by the Montreal Laboratory (Exhibit R-1, para. 15 = Exhibit A-14, p. 104).

32. The CBAt Sports High Court placed great weight on the evidence of Dr. Gómez Bellver and found that there was a "doubt about the reliability of the "B" sample results" and that "Rule 55.11 combined with Rule 59.6 of the IAAF 2002-2003 Official Rules struggl[ed] (sic) for the absolution of the athlete". Accordingly, the CBAt Sports High Court reached the following conclusion in its written decision (Exhibit R-1 para.22 = Exhibit A-14, p. 105):

> The Athlete, Ms. dos Santos was absolved by unanimity due to the insufficiency, inconsistency and unreliability of the B sample result, being benefited by the reasonable doubt on terms of 2002-2003 IAAF Official Rules.

33. On the basis that the "CBAt breached IAAF Rules in failing to find Ms. dos Santos guilty of a Doping Offence and impose the requisite penalty upon her", the IAAF decided to appeal against the decision of CBAt Sports High Court, and to suspend the Athlete "pending the CAS decision" pursuant to IAAF Rule 59.4 *in fine*.

II PROCEEDINGS BEFORE THE CAS

1. WRITTEN PROCEEDINGS

34. On 13 May 2002, IAAF filed a 'Statement of Appeal' against the decision of the CBAt Sport High Court with the Court of Arbitration for Sport (the "CAS") pursuant to IAAF Rule 21 and Article R47 of the 'Code of Sports-related Arbitration' (the "CAS Code").

The IAAF based its appeal on the ground that the CBAt Sport High Court had "reached an erroneous conclusion" within the meaning of IAAF Rule 22.3 (ii). In its Statement of Appeal, the IAAF appointed The Hon. Robert Ellicott, Q.C. as arbitrator.

35. On 23 May 2002, the 'Appeal Brief of the IAAF Filed in Support of its Reference to Arbitration under CAS Rule 51' (The "Appeal Brief") was submitted to the CAS, together with a bundle of exhibits (Exhibits A-1 to A-18) and a bundle of scientific articles (Exhibits A-II.1 to A-II.6).

36. By written submission dated 22 May 2002, Ms. dos Santos expressly accepted the jurisdiction of the CAS and appointed as arbitrator Mr. Juan Vives R. de Hinojosa. By submission dated 24 May 2002, CBAt also agreed to the jurisdiction of the CAS and to the appointment of Mr. Juan Vives R. de Hinojosa as arbitrator for both of the Respondents.

37. On 6 June 2002, the Acting Secretary General of the CAS issued a 'Notice of Formation of a Panel' confirming the appointment of Mr. Robert Ellicott and Mr. Juan Vives R. de Hinojosa as Arbitrators, and the appointment by the President of the CAS Appeals Arbitration Division of Mr. L. Yves Fortier, C.C., Q.C. as President of the Panel.

38. On 14 June 2002, the Acting Secretary General of the CAS issued an order of procedure on behalf of the President of the Panel (the "Order of Procedure"). The Order of Procedure addresses a number of procedural matters in respect of this appeal. With respect to the law applicable to the merits, the Order of Procedure provides that "the Panel shall decide the dispute pursuant to the applicable regulations and the rules of law chosen by the parties or, in absence of such a choice, pursuant to the law of Brazil", in accordance with Article R58 of the CAS Code. By submission dated 24 June 2002, the IAAF expressed its disagreement on this point and proposed the application of Monegasque law. By submission dated 28 June 2002, the Athlete opposed the position advanced by the IAAF and argued that the merits should be determined in accordance with Brazilian law. The IAAF reiterated its position on the applicable law in a submission dated 4 July 2002 and, on this basis, stated that it was unwilling to sign the Order of Procedure. On 23 August 2002, the Acting Secretary General informed the

Parties that the President of the Panel had decided that the disputed question of "the law applicable to the merits would be discussed at the hearing as a preliminary issue".

39. On 24 June 2002, Ms. dos Santos filed an 'Answer and Opposition to the Appeal' (the "Answer Brief"), accompanied by one volume of exhibits (Exhibits R-1 to R-17).

40. On the same day, the CBAt filed a document titled "CBAt Response and Documents" (the "Response Brief").

41. On 1 July 2002, Ms. dos Santos filed a motion to challenge the appointment of Mr. L. Yves Fortier as President of the Panel on the ground that "his residence in Montreal makes him not ideal to act with impartiality since the object of this appeal centers on the defective analyses carried out by the Doping Control Laboratory in Montreal". In accordance with Articles R33 and R34 of the CAS Code, the International Council of Arbitration for Sport (ICAS) considered this motion and dismissed it by decision dated 30 July 2002. In reliance on Swiss Federal Supreme Court case law and Swiss legal commentators, the ICAS observed that arbitrators must be independent of the parties both under Article R33 of the CAS Code and Article 180.1(c) of the Swiss Private International Law Act[2]. Noting that "the Petitioner [did] not raise any arguments regarding any relationship between Mr. Fortier and one of the Parties and [being] satisfied that Mr. Fortier declared that neither himself nor his law firm have any relationship with the Doping Control Laboratory in Montreal and or with Dr. [...] Ayotte", ICAS dismissed the Athlete's motion challenge the appointment of the President of the Panel[3].

42. Following the IAAF's request for leave to file an additional written reply, the President of the Panel decided to allow a second round of written submissions in accordance with Article R56 of the CAS Code. The IAAF filed its 'Reply in Response to Ms dos Santos'

[2] Article 180.1(c) provides that "an arbitrator may be challenged [...] if circumstances exist that give rise to justifiable doubts as to his independence".

[3] For the sake of completeness, it should be pointed out that the ICAS also emphasized that, under both of the CAS Code and Article 180.1(c) of the Swiss Private International Law Act, "it is very doubtful that such relationship would be sufficient to create legitimate doubt over his independence. In principle and unless there is evidence to the contrary, a laboratory in charge of doping control analyses is supposed to perform its mission in total independence although it has been designated by a federation to carry on such analysis".

Answer to the Appeal' (the "IAAF Reply") on 2 September 2002. Ms. dos Santos filed her Reply on 13 September 2002 (the "Athlete's Reply").

43. In a statement dated 8 November 2002, CBAt clarified that its procedural position in this appeal was as follows (Exhibit A-7, paras.8-11):

> though the Rule 59.5 of IAAF [which formally attributes the decision of the Sport High Court to the CBAt] CBAt understands that the entity will attend the arbitration hearing not as a Respondent, but as a party interested in defending principles of the national and international rules of Athletics. [...] Therefore, CBAt [...] allow the athlete to defend her position [...] [and] will not manifest about the submission presented by IAAF, since it is [its] understanding that these subjects should be clarified directly by the athlete's defense.

2. THE HEARING

44. The hearing in this appeal was held on 8 November 2002, at the CAS Headquarters in Lausanne, Switzerland.

45. The CBAt's counsel, at the outset of the hearing, expressly confirmed that the CBAt was acting as a "mere interested party" in this appeal. When questioned about this position by the Panel, the CBAt's counsel declared that the Panel should, on this basis, ignore the various defences on the merits previously raised by the CBAt.

46. While maintaining their previous respective positions on the question of the law applicable to the merits, the Parties acknowledged that they were not, at that stage, aware of any disputed issue of substantive law and, accordingly, agreed that it would only be necessary to address this question if such a dispute issue arose during the hearing.

47. The Panel heard the oral submissions of counsel for the Parties and the oral evidence of the following witnesses:

- Professor Christiane Ayotte, Director of the Montreal Laboratory, who gave factual testimony on behalf of the Appellant;
- Professor Peter Hemmersbach, Scientific Director of the Oslo Laboratory, who gave expert evidence on behalf of the Appellant; and

- Dr. Ovídio Gomez Bellver, Doctor in Chemistry and Pharmacy specialized in the analysis of medicines and drugs, acting director of the Doping Control Laboratory in Valladolid, Spain, who provided expert evidence on behalf of the Athlete.

Each witness provided a written statement prior to the hearing, and was questioned by the Parties' counsels, as well as by the members of the Panel.

48. During the hearing, the following documents were filed:

- The CBAt filed a fax dated 5 August 2002 in which Ms. dos Santos confirmed to the CBAt's President that she agreed to be represented by Professor Cardoso for the opening and analysis of the Rio de Janeiro "B" sample. While expressing concern that this evidence had not been produced at an earlier stage of the proceeding, Ms. dos Santos' counsel did not oppose the filing of this fax. The fax and a free translation provided by the CBAt's counsel were filed as "Exhibit T[ribunal]-1".
- Following a request by the Panel, the IAAF filed hard copies of the slides used by Professor Ayotte during her testimony as "Exhibit T-2".
- At the end of the hearing, the IAAF sought leave to file a fax from the Montreal Laboratory containing the results of the IRMS analysis of the Rio de Janeiro "B" sample. The President of the Panel adjourned the hearing to allow the Athlete's counsel an opportunity to study this new evidence, and ordered that Professor Ayotte should be made available to be cross-examined on the content of this fax. After the hearing was reconvened, the Athlete's counsel stated that "the late filing of this evidence illustrates the irregular way in which the IAAF conducted all the procedure", but he did not object to the filing of this fax as evidence. The Panel therefore ruled that this document should be received as evidence as "Exhibit T-3".

49. Although counsel for the Parties did not wish to conduct any further cross-examination of Professor Ayotte, the Panel recalled and questioned her on the IRMS analysis set out in Exhibit T-3.

50. At the conclusion of the hearing, the Parties confirmed that they did not wish to submit any further evidence. Moreover, the Parties did not raise any objection in regard to the way in which the arbitration proceeding was carried out or in regard to the composition

of the Panel. After closing arguments by counsel for the Parties, the President informed the Parties that the Panel would now deliberate and render its decision as soon as possible. The President declared the hearing closed.

3. THE SUBMISSIONS OF THE PARTIES

3.1 The IAAF's Submissions

51. In its written and oral submissions, the IAAF has advanced four main contentions:

(a) A prohibited substance, testosterone, was found in the sample provided by Ms. dos Santos in Rio de Janeiro on 6 May 2001. Both the analysis of the "A" sample and the counter-analysis of the "B" sample showed a T/E ratio in excess of 25, which is a very high ratio. According to the IAAF, the significant difference in the results between the "A" sample and the "B" sample can be explained on technical grounds and does not invalidate the conclusion that the T/E ratio was in excess of 25.

(b) The IAAF argues that the T/E ratio so exceeded the range of values normally found in humans as not to be consistent with normal endogenous production. Ms. dos Santos has provided no evidence that the abnormal T/E ratio was attributable to pathological or physiological conditions.

(c) Even though there is no obligation in the IAAF's Rules or Regulations to carry out either a longitudinal study or hormonal monitoring, the IAAF undertook such additional tests, the results of which provide a basis for drawing adverse inferences against the Athlete. In this regard, the IAAF emphasizes the fact that the analysis of previous samples provided by Ms. dos Santos between 1995 and 1997 showed a normal T/E ratio while the analysis of the Rio de Janeiro sample shows a very high T/E ratio. In addition to the results of the longitudinal study, the IRMS analysis of the Rio de Janeiro "A" and "B" samples confirms that the elevated T/E ratio was due to exogenous administration of a prohibited substance.

(d) In reliance on the above evidence, the IAAF submits that Ms. dos Santos is guilty of a Doping Offence as defined in the IAAF Rules. According to IAAF Rule

60.2(a)(ii), Ms. dos Santos should therefore be declared ineligible for life since this is her second offence for anabolic steroids.

52. Based upon all of the above submissions, the Appellant requests the Panel to make the following findings:

> [...] that CBAt miscredited itself or otherwise reached a erroneous conclusion in exonerating Ms dos Santos of a Doping Offence
>
> [...] that Ms dos Santos is guilty of a Doping Offence and should be declared ineligible for life pursuant to IAAF Rules 60.2(a)(ii)
>
> [...] that CBAt and/or Ms dos Santos reimburses to the IAAF the Court Office fee of 500CHF and its costs, to be ascertained.

3.2 The CBAt's Submissions

53. In its Response Brief, the CBAt originally advanced three main contentions:

(a) The CBAt questions the regularity of the procedure adopted by the IAAF, in particular by referring to the Olympic Movement Anti-Doping Code ("OMAC") which, according to the CBAt, provides that "[i]n case of T/E greater than 6, it is mandatory that the relevant medical authority conducts an investigation before the sample to be declared positive".

(b) In this regard, the CBAt relies upon an attached expert report by Prof. Cardoso in which he concludes "that additional data on her [Ms dos Santos] current endogenous steroid profile should be obtained before a final and exhaustive decision of the case can be reached".

(c) Finally, the CBAt emphasizes that, if Ms dos Santos is found to be guilty of a Doping Offence, the sanction to be applied is not a suspension but rather a life ban, which will affect both her personal and professional life.

54. Based upon the above submissions, the CBAt originally requested the following relief in this appeal arbitration proceeding:

> [...] the total and exhaustive clarification of the facts related in this case, in order to certify the doping infraction attributed to the athlete Ms. Fabiane dos Santos, according to the IAAF and IOC rules, to reach a real conclusion whether the athlete committed the doping infraction or not.

55. However, as noted above, the CBAt formally withdrew the above submissions and request for relief at the hearing.

3.3 Ms. dos Santos's Submissions

56. In her written and oral submissions, Ms. dos Santos has advanced six main contentions:

(a) Firstly, it is argued that the results of the tests carried out by the Montreal Laboratory on the Rio de Janeiro Sample were null and void. The significant difference between the results of the "A" sample analysis and those of the "B" sample counter-analysis allegedly shows a lack of precision that must be attributed to grave errors by the Montreal Laboratory. A deviation of 109% creates a more than reasonable doubt regarding the accuracy and correctness of these analyses. In the submission of Ms. dos Santos, the results of these analyses cannot therefore serve as a proper basis for imposing a sanction for a Doping Offence. This is particularly true in cases such as the present one, where a finding of doping is based on quantitative analysis, where a minimum precision is required within statistical parameters.

(b) The evidence of Prof. Ayotte and Prof. Hemmersbach to the contrary is not conclusive because both of them work for the IAAF and therefore cannot be considered to be independent experts.

(c) In view of the significant difference in the results of the "A" sample analysis and "B" sample counter-analysis, Ms. dos Santos argues that these two samples may not even belong to the same person.

(d) Since there is no certainty that the urine at issue is that of Ms. dos Santos, the results of the IRMS analysis are equally inconclusive.

(e) Even if the analysis could establish the presence of testosterone, Article 2.5.2 of the IAAF Procedural Guidelines requires additional investigation (i.e., the so-called longitudinal study) in order to make an adequate and definitive decision regarding the origin of the substance allegedly found. This additional investigation is compulsory. While the IAAF ordered additional tests, it did not carry out an adequate longitudinal study. Ms. dos Santos maintains that this failure on the part of the IAAF invalidates the procedure followed in determining the existence of a Doping Offence.

(f) Finally, Ms. dos Santos argues that she was suspended before receiving any laboratory documentation and therefore she did not have an opportunity to contest

the test results, which allegedly constituted an infringement of her right of due process.

57. Based upon the above submissions, Ms. dos Santos requests the following relief in this appeal arbitration proceeding:

> [t]hat, taking this document [i.e. the "Answer and Opposition to the Appeal], it [CAS] accepts it, regards as contested in opposition in due form and time the appeal of the IAAF, and once the oral hearing has taken place and all evidence practiced, as well as all other legally established processes having been conducted, a Resolution is issued by which the appeal of the IAAF is dismissed, and the Resolution dates 11 March 2002, issued by the STJD of the CBAt, declaring the athlete Fabiane dos Santos eligible and free of any infringement of doping, is confirmed, together with other pronouncements inherent in such declaration, ordering that the IAAF lose its deposit of 500 Swiss francs, all of which as being fitting by law.

III LEGAL ANALYSIS

1. SEAT OF THE ARBITRATION AND ARBITRATION LAW

58. In accordance with Article R28 of the CAS Code, the seat of this appeal arbitration proceeding is Lausanne, Switzerland. Since at least one of the parties is domiciled outside of Switzerland, the arbitration is governed by the provisions of Chapter 12 of the Swiss Private International Law Act, in accordance with Article 176(1) of such Act.

2. JURISDICTION AND OTHER PROCEDURAL MATTERS

2.1 Jurisdiction

59. The jurisdiction of the CAS and the Panel arise out the provisions of the CAS Code and the IAAF Constitution.

60. Article R47 of the CAS Code provides the following in respect of appeal arbitration proceedings:

> **Appeal**
>
> A party may appeal from the decision of a disciplinary tribunal or similar body of a federation, association or sports body, insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports body.

61. IAAF Rule 21.2, effective 1 November 2001, provides the following:

> **Disputes**
>
> All appeals (i) between Members, (ii) between a Member and an athlete, (iii) between the IAAF and an athlete, or (iv) between the IAAF and a Member, however arising, whether doping or nondoping related, shall be referred to the Court of Arbitration for Sport or any of its affiliates situated elsewhere ("CAS") within sixty days of the date of communication to the prospective appellant of the decision that is to be referred.

As an "example of disputes that may be submitted to CAS by way of an appeal", IAAF Rule 21.3 specifically includes the following situation:

> (ii) Where a Member has held a hearing under Rule 59.3 and the IAAF believes that, in the conduct or conclusions of such hearing, the Member has misdirected itself, or otherwise reached an erroneous conclusion.

62. According to Note 2 of the Transitional Provisions of the IAAF Rules ("IAAF Note 2"), the arbitration clause contained in IAAF Rule 21.2 does not apply "[w]here a dispute has arisen prior to 1 November 2001, or where a Member has made a decision concerning a doping matter before this date". In the present case, the dispute arose before 1 November 2001 (namely around 6 August 2001, when Ms. dos Santos first contested the positive finding of doping) but the CBAt made its decision after that date (namely on 11 March 2002, when the CBAt Sport High Court held its hearing and decided that Ms. dos Santos should be absolved). From the wording of IAAF Note 2, it is not clear which date should be considered as the relevant date in doping disputes. The CAS case law does not provide any help in regard to this issue, since it has simply been held that IAAF Note 2 means that "disputes relating to any doping matter before 1 November 2001 shall be resolved in accordance with the prior IAAF Rules" (CAS 2002/A/362 *IAAF v/CAF & Zubek*).

63. The Panel notes that this issue does not need to be decided in the present case because Note 3 of the Transitional Provisions of the IAAF Rules ("IAAF Note 3") provides the following:

> Notwithstanding Note 2 above, with the consent of the parties to any dispute or doping matter (including, where the Member's decision is subject to review by the IAAF, with the consent of the IAAF), such dispute or doping matter may be referred, on an ad hoc basis, to be resolved under the appellate jurisdiction of the Court of Arbitration for Sport.

64. The IAAF expressly invoked the jurisdiction of the CAS in its Statement of Appeal, and the Athlete expressly accepted it in her submission of 22 May 2002. In view of these circumstances and IAAF Note 3, the Panel has no doubt that the IAAF's appeal against

the decision of the CBAt Sport High Court meets the jurisdictional requirements set out in Article R47 of the CAS Code and IAAF Rule 21.

65. In this context, the Panel notes the Athlete's contention that "it is incongruous that the IAAF, which, according to its Regulations 'is constituted by the duly elected national bodies responsible for amateur athletics, which undertake to observe the Regulations an Standard of the IAAF,' (as is the case of the CBAt), should appeal against a decision of a Member Federation issued under these regulations" (Answer Brief, p. 3). If and to the extent that this contention can be understood as an objection to the jurisdiction of the CAS, it is clearly in contradiction with the plain wording of IAAF Rule 21 and the Athlete's express submission to the jurisdiction of the CAS.

66. Finally, it should be emphasized that, as noted above, neither Party raised any objection to the jurisdiction of the Panel during the hearing held in Lausanne on 8 November 2002.

2.2 Timeliness of the Appeal

67. The 21 day time-limit for filing an appeal arbitration proceeding under Article 49 of the CAS Code applies only "[i]n the absence of a time-limit set in the statutes or regulations of the federation". IAAF Rule 21.2 provides that all appeals to the CAS must be made "within sixty days of the date of communication to the prospective appellant of the decision that is to be referred."

68. The CBAt Sport High Court rendered the decision under appeal on 11 March 2002 and notified it to the IAAF on 15 March 2002. The IAAF's Statement of Appeal was filed on 13 May 2002. Since the Respondents do not contest the date of communication of the decision under appeal to the IAAF, the Panel finds that the IAAF filed this appeal within the time limit prescribed in IAAF Rule 21.

2.3 Language

69. In accordance with Article R29 of the CAS Code, the language of this appeal arbitration proceeding is English.

2.4 Applicable Procedure

70. The applicable procedure is that specified for "appeal arbitration proceedings" in Article R47 *et seq* of the CAS Code.

71. Article R57 of the CAS Code provides the following in respect of the Panel's scope of review:

> The Panel shall have full power to review the facts and the law.

Accordingly, the Panel is not bound by the evidence adduced before, or the factual or legal findings of, any other body or court which has ruled on this case.

3. APPLICABLE LAW

72. Under the heading "applicable law", Article 187(1) of the Swiss Private International Law Act stipulates the following:

> the Arbitral Tribunal shall decide the case according to the rules of law chosen by the parties or, in the absence thereof, according to the rules of law with which the case has the closest connection.

73. The IAAF Rules do not specify any choice of law in respect of an appeal to the CAS or otherwise. With respect to appeal arbitration proceedings, Article R58 of the CAS Code provides the following in regard to the applicable law:

> **Law Applicable**
>
> The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports body which has issued the challenged decision is domiciled.

3.1 Applicable Regulations

74. It is common ground that the IAAF Doping Control Rules referred to above in Section 1.2 are applicable to this arbitration. The Parties disagree on whether the Olympic Movement Anti-Doping Code (defined above as the "OMAC") is also relevant to the issues in this arbitration.

75. Relying on a decision by an IAAF Arbitration Panel (IAAF Arbitration Panel, *IAAF v. FIDAL & Antonella Bevilacqua*, Decision of 25 November 1996, reported in Lauri TARASTI, *Legal Solution in International Doping Cases, Awards by the IAAF Arbitration Panel 1985-1999*, Milan, 2001, p. 135), the IAAF submits that the OMAC is not applicable in the absence of a specific provision incorporating such regulations by

reference into the IAAF Rules. On the other hand, Ms. dos Santos contends that, while not directly incorporated by reference into the IAAF Rules and regulations, the OMAC should be considered as providing general guidelines to be followed in the fight against doping, and serve in particular to clarify doubtful situations.

76. In deciding this issue, the Panel first draws attention to the fact that it is not bound by the decisions previously rendered by IAAF Arbitration Panels, which is an internal body of the Appellant. Nevertheless, the IAAF Rules do not, as a matter of fact, incorporate by reference the OMAC. This means that, in matters covered by the IAAF Rules, there is no place for the application of the OMAC. However, in the Panel's view, this does not mean that the OMAC cannot be taken into consideration as providing general guidelines in order to decide matters that are not specifically addressed by the IAAF Rules or for which the IAAF Rules do not offer a clear and comprehensive response (See CAS 94/129, *USA Shooting & Quigley. c. UIT*, Award of 23 May 1995, CAS Digest I, p. 187, 200, para 47; CAS 2001/A/345, *Roland Meier c. Swiss Cycling*, Award of 28 January 2001, para. V.3.1.1, p. 11).

3.2 Applicable Rules of Law

77. As already mentioned, the Parties disagree on the applicable substantive law. The IAAF submits that Monegasque law is applicable because the Panel is bound by the IAAF Rules and Regulations, which are clearly governed by such municipal law. Ms. dos Santos argues in favour of the application of Brazilian law, relying upon *inter alia* the fact that she is a Brazilian national and that the body that issued the decision under appeal is domiciled in Brazil. At the hearing, the Parties restated their disagreement regarding the applicable substantive law, but acknowledged that this appeal does not raise any issues to be resolved according to municipal law.

78. Given the nature of the issues in this appeal, the Panel will not refer to municipal substantive law, except insofar it may represent an expression of more general principles of law. In any event, the Panel will not decide any substantive issue on the basis of a specific national law. The Panel therefore finds that it is unnecessary to rule on the question of the substantive law applicable to this appeal.

79. For greater certainty, the Panel wishes to stress that its decision not to rule on the applicable substantive law should not be taken as a confirmation of the position set out in its Order of Procedure, which provides for the application of Brazilian law according to Article R58 of the CAS Code. In this respect, the Panel observes that Articles R47 *et seq.* of the CAS Code (including Article R58) have been drafted in view of 'ordinary' appeal proceedings, in which an athlete appeals from the decision of a sports body. The appeal envisaged in IAAF Rule 21 is not necessarily an "ordinary" appeal, considering that the IAAF itself is entitled to challenge a decision of a tribunal of a national federation. It might be useful for ICAS to provide for specific rules regarding this kind of appeal in order to clarify the situation.

4. THE DOPING OFFENCE

4.1 The Offence at Issue

80. The Panel notes that the offence at issue in this appeal is that set out in IAAF Rule 55.2(i), according to which a doping offence takes place when "a prohibited substance is present within an athlete's body tissues or fluids".

81. In this case, as noted earlier, the relevant prohibited substance is testosterone, a substance expressly listed in Schedule 1 Part I (a) (II) to the IAAF Procedural Guidelines. With respect to samples containing testosterone, this provision states as follows:

> [A] sample will be deemed to be positive for testosterone where either the ratio in urine of testosterone to epitestosterone, or the concentration of testosterone in urine, so exceeds the range of values normally found in humans as not to be consistent with normal endogenous production.
>
> A sample will not be regarded as positive for dihydrotestosterone or testosterone where an athlete proves by clear and convincing evidence that the abnormal ratio or concentration is attributable to a pathological or physiological condition.

4.2 The Burden of Proof

82. In the CAS jurisprudence, it has generally been held that the sporting federation has the burden of proving the elements of a doping violation, whether the sporting federation appears as plaintiff/appellant or defendant/respondent (CAS 2001/A/343 *UCI V. Hamburger*, paraV.1.2.3.3, p. 19). The same principle is expressly set out in IAAF Rule 59.6 (see *infra* ¶ 86).

83. In the context of the offence at issue in the present appeal, this principle means that the IAAF must prove that the quantity of testosterone in the Athlete's sample so exceeds the range of values normally found in humans as not to be consistent with normal endogenous production. If the IAAF discharges this burden of proof, the Athlete's samples are deemed to be positive and the Athlete then has the burden of proving by clear and convincing evidence that the quantity of testosterone found is attributable to a pathological or physiological condition (see - by analogy - IAAF Arbitration Panel, *IAAF v. JAAC & Merlene Ottey*, Decision of 3 July 2000, para 10, available at *http://www.iaaf.org/news/Kind=2/newsId=14766.html*).

4.3 The Standard of Proof

84. As a matter of principle, it is generally recognized that criminal law standards are not applicable to disciplinary proceedings conducted within the framework of private associations such as sporting federations. Although this principle has been increasingly criticized (see for instance J.W. SOEK, *The Legal Nature of Doping Law*, The International Sports Law Journal, 2002/2, pp. 2-7), it has been expressly confirmed by the Swiss Federal Supreme Court in connection with a recent (unsuccessful) application to set aside a CAS award (Tribunal Fédéral, *Lu Na Wang et al. v. FINA*, 5P.83/1999, Decision of 31 March 1999, para. 2(d), reported in: *CAS Digest II*, p. 767, 773).

85. In view of the drastic consequences that a suspension for doping has on a competitive athlete's exercise of his or her trade, CAS panels have applied higher standards than the standard of proof required in ordinary civil proceedings (namely, a balance of probabilities) and generally adopt the test set out in *Korneev et Gouliev v. IOC*:

> [the] ingredients must be established to the comfortable satisfaction of the court having in mind the seriousness of the allegation
>
> (CAS OG/96/003, CAS OG/96/004 *Korneev et Gouliev v. IOC*, reported in: Mealey's International Arbitration Report, February 1997, p. 28; See also CAS 98/208 *Lu Na Wang et al. v. FINA*, Award of 22 December 1998, CAS Digest II, p.234, *247*; CAS 2001/A/345, *Roland Meier c. Swiss Cycling*, Award of 28 January 2001, para. V.3.1.3, pp. 13-14).

86. While the Panel endorses this general principle, it is important to note that every sporting federation is free to adopt a higher standard of proof. In this respect, IAAF Rule 59.6 sets out the following standard of proof:

> where a hearing take place pursuant to Rule 59.3, the Member shall have the burden of proving, beyond reasonable doubt, that a doping offence has been committed.

87. Even though this provision specifically relates to the "hearing before the relevant tribunal of [the athlete's] National Federation" within the meaning of IAAF Rule 59.3, it has also been applied in appeals by the IAAF from decisions of National Federation tribunals pursuant to IAAF Rule 21(3)(ii). In the jurisprudence of the IAAF Arbitration Panels, it has been held that the following standard of proof is applicable in appeal proceedings:

> IAAF bears the burden of proving all the elements of the offence beyond reasonable doubt.
>
> (*IAAF v. JAAC & Merlene Ottey*, Decision of 3 July 2000, para 10, available at *http://www.iaaf.org/news/Kind=2/newsId=14766.html*. See also *IAAF v. The Athletic Federation of Nigeria*, Decision of 10 April 1995 referring expressly to IAAF Rule 59.6 [at that time 59.5], reported in TARASTI, *op.cit.*, p. 135).

The Panel sees no reason to depart from this standard. It should, however, be emphasized that this high standard of proof, which is very similar to the one required in criminal matters, is only applicable because of the specific requirements established by the IAAF Rules and jurisprudence. In particular, the Panel's finding in these specific circumstances should not be considered as a departure from the well established case law of the CAS in regard to the ordinary standard of proof in doping matters.

4.4 The Panel's Findings

88. For the following reasons, the Panel has concluded that the IAAF has discharged its burden of proving beyond reasonable doubt that the Appellant committed a doping offence under IAAF Rule 55.2(i):

(a) The analysis of the "A" sample and the counter-analysis of the "B" sample both demonstrate that the T/E ratio of Ms. dos Santos' urine collected in Rio de Janeiro on 6 May 2001 so exceeds the range of values normally found in humans as not to be consistent with normal endogenous production.

(b) The IRMS analysis provides additional direct and conclusive scientific evidence of an exogenous administration of the prohibited substance testosterone by the Athlete.

(c) The Panel does not accept the Athlete's submission that the differences in the results of the analysis of the "A" sample and "B" sample demonstrate that such samples are not from the same person.

(d) The Panel does not accept the Athlete's submission that Professor Ayotte and Professor Hemmersbach lacked the independence required of expert witnesses.

(e) The Panel does not accept the Athlete's submission that a suspension cannot be imposed due to a violation of her right to a fair hearing.

5. THE ATHLETE'S T/E RATIO IS INCONSISTENT WITH NORMAL ENDOGENOUS PRODUCTION

89. Testosterone is the classic example of so-called "natural substances", i.e., a prohibited substance that is normally present in the human body. While in the case of a substance foreign to the human body, it is only necessary for the analysis to detect the presence of the prohibited substance, the mere detection of a natural substance in an athlete's fluids is not sufficient to establish a doping offence: other conditions must be fulfilled in order to distinguish natural from artificially administered substances.

90. Schedule 1, Part I of the IAAF Procedural Guidelines for testosterone do not set out a specific threshold, but rather refer to a level of testosterone that "so exceeds the range of values normally found in humans as not to be consistent with normal endogenous production". The relevant values of testosterone may be "either the ratio in urine of testosterone to epitestosterone [the so-called T/E ratio], or the concentration of testosterone in urine".

91. Based upon these provisions and the Athlete's above- mentioned submissions, the Panel finds that the following conditions must be met in order to establish a doping offence on the basis of an elevated T/E ratio: (i) the results of the analysis reveal elevated T/E ratios, (ii) in a reliable way, (iii) for both the "A" and "B" samples', that (iv) so exceed the range of values normally found in humans (v) as not to be consistent with normal endogenous production.

92. Before turning to these issues, the Panel recalls that CAS panels have recognized that "every federation is free to lay down its own method of testing for the presence of a

prohibited substance, provided that the test method is sufficiently reliable." (CAS 2001/A/345, *Roland Meier c. Swiss Cycling*, Award of 28 January 2001, para. V.2, p. 9).

5.1 The Results of the Analysis and the Reliability of these Results

93. In this appeal, the Athlete's case rests upon the following main contention (Answer Brief, p. 20):

> [T]he deviation in quantification of the T/E ratio between specimens A (analysis) and B (counter-analysis), is +109.7%. Therefore, these deviations between analyses make their results UNRELIABLE, since all results must be based on a criterion of precision (quantification) that makes it possible to guarantee their reproducibility.
>
> Also in quantitative analysis, precision is fundamental. Since there was neither precision nor reliability, the analysis is NULL AND VOID. Variability in the T/E ratio is, at the very least, uncommon, unclassifiable, and far from being technically permissible, This creates a more-than reasonable doubt regarding the accuracy and correctness of the results obtained, both in the confirmation of Specimen A, and in the counter-analysis.

94. The Panel will first consider the results of the analysis of the "A" and "B" samples and then turn to the reliability of these results.

5.1.1 The Results of the Analysis of the "A" sample

95. The Montreal Laboratory concluded that the analysis of the "A" sample showed a "T/E ratio greater than 25" (See Certificate of Analysis, Exhibit A-9, p. 2 = Exhibit R-3). As explained in Professor Ayotte's Witness Statement, the wording "T/E ratio greater than 25" was used "because that was the highest value of the standards used for confirmation analysis" under the following procedure (Exhibit A-3, paras. 17-19, pp. 6-7):

> On 22 May [2001], three aliquots of 1.5 mL of the "A" sample [...] were analysed together with a blank urine, eight urinary testosterone and epitestosterone standards [...] ranging from 0.50 to 10.9, and two T/E urinary quality control samples (0.05 and 6 respectively) to verify the accuracy of the calibration curve. Another urinary T/E standard containing 50 ng/mL of testosterone and 2 ng/mL of epitestosterone [i.e. a T/E ratio of 25] was also prepared as this was the corrected value measured in the screening of urine sample A072048.
>
> The mean T/E ratio (direct area ratio) measured in the three aliquots of urine sample A072048was 83 ± 3.7 (coefficient of variation ("c.v") 4.4%). The highest standard which we used had a ratio of 25:1, therefore the mean T/E ratio in the sample was over three times larger than the standard. As a result, it is difficult to give the exact T/E ratio at such high level. Indeed, the instrument (instrument MSD 8) which we used is unable to read T/E ratios accurately at such high levels as it is intended to detect T/E ratios which, although suspicious are much closer to the limit. In particular, the instrument is calibrated to be very accurate at reading T/E ratios up to 15. A T/E ratio of 83 is beyond the limit of the machine. For this reason we have officially reported on the

> certificate of analysis that the T/E value was greater than 25. It is also for this reason that the T/E ratio of 83 [...] was underestimated at 38 when corrected.

96. At the hearing, Professor Ayotte explained that this was also the reason why the Montreal Laboratory added the manuscript note "erroneous results" to the T/E values reported on the "A" sample's "Analysis Summary" (Exhibit A-9 p. 24 = Exhibit R-2; see *supra*, ¶ 10).

5.1.2. The Results of the Analysis of the "B" sample

97. The analysis of the "B" sample was conducted in accordance with the same procedure used for the "A" sample, but with the following modifications (Professor Ayotte's Witness Statement, Exhibit A-3, para. 24, p. 9 and para 22, p. 8):

> In light of the very high T/E ratio measured in the "A" sample, the representatives [i.e., Mr. Paiva for the CBAt and Professor Caroso for the Athlete] and myself [i.e., Professor Ayotte] agreed to modify the T/E confirmation procedure. In particular, we agreed not to use the 8 urinary standards and the 2 quality control samples and instead use only two T/E standards of 6/1 and 25/1.

98. At the hearing, Professor Ayotte explained that these standards were chosen to show that the T/E ratio was greater than 6 (actually the threshold adopted by the OMAC, see *infra* ¶ 120) and greater than 25, which was the value found in the analysis of the "A" sample which remained to be confirmed. This is why the Certificate of Analysis issued by the Montreal Laboratory recorded that there was a "T/E ratio greater than 25" although the actual estimated T/E ratio was 38. Professor Ayotte explained in her Witness Statement (Exhibit A-3, paras. 24-25, p. 9):

> The Mean T/E value (direct area ratio) estimated on instrument MSD 1 in the three aliquots of urine sample B072048 was 73 ± 3.8 (c.v. 5.2%). The mean corrected value obtained by comparison to the two urinary standards of 6 and 25 was 79 ± 4.2 (c.v. 5.3%).

5.1.3. The Reliability of the Results

99. As a starting point, the Panel recognizes that the reliability of the test results is of central importance in doping cases. In a previous case, the IAAF itself recognized that manifest failures in the testing procedure can relieve the athlete of any obligation to provide an explanation for elevated testosterone levels (see David McArdle, *'Say it ain't so, Mo.' International Performers' Perceptions of Drug Use and the Diane Modhal Affair*, in: Drugs and doping in sport: socio-legal perspectives, London-Sydney, 2001, p. 91, 97, referring to the IAAF Council's decision to withdraw the case against

Diane Modhal because of "failures in the testing procedure regarding sample storage and the loss of paperwork").

100. In the present case, the Panel points out that the chain of custody documents are in evidence and that there is no indication of any break in the chain of custody. The evidence shows that the seals were inspected and found to be intact at the time that the "A" sample and "B" sample were each opened and tested. Moreover, the Athlete does not challenge the chain of custody, as such. Rather, the Athlete's main objection is as follows (Answer Brief, p. 20):

> As can be observed, the deviations in results for values of urinary concentrations of T and Ep (and therefore, in the T/E ratio) are so significant that they lead to the conclusion that said quantifications are neither reliable nor accurate, thus nullifying the analysis and invalidating its effects as far as acting as proof of "doping" [...]
>
> As can be seen, the deviation in the quantification of the T/E ratio between Specimens A (analysis) and B (counter-analysis), is + 109.7%. Therefore these deviations make their results UNRELIABLE since all results must be base on a criterion of precision (quantification) that makes it possible to guarantee their reproductibility.

101. The Panel finds that the first argument advanced by Ms. dos Santos – that the deviations in the urinary concentrations of T and Ep demonstrate the unreliability and the inaccuracy of the analysis – is logically inconsistent. This argument is based on the erroneous postulate that the relevant T/E ratio was calculated as a direct ratio of the concentrations of testosterone [T] and epitestosterone [Ep]. Significantly, in her submissions, Ms. dos Santos makes the following argument (see for instance Answer Brief, p. 20, emphasis added):

> the deviations in results for values of urinary *concentrations* of T and Ep (and *therefore, in the T/E ratio*) are so significant that they lead to the conclusion that said quantifications are neither reliable nor accurate...(our emphasis)

102. Similarly, Professor Gómez Bellver gave the following evidence in respect of the reliability of the analysis (Exhibit R-18, para. 17, emphasis added):

> In light of the results of the case [...] we can state that the analysis [...] are completely lacking in precision, making it impossible to establish with certainty the real urinary *concentrations* of testosterone and epitestosterone *and the resulting T/E ratio.* (our emphasis)

103. While it is true that the T/E ratio can be calculated as the ratio of the actual concentrations of testosterone and epitestosterone, it can also be determined as the ratio of the area of the peak of testosterone over epitestosterone (See Professor Gómez Bellver's Expert Report, Exhibit R-18, para. 12). In the present case, the Montreal

Laboratory used this second method to calculate the T/E ratio (See Professor Ayotte Witness Statement, para. 31, Exhibit A-3, p. 11, which was confirmed by testimony during the hearing). From a logical and scientific point of view, it is not possible to challenge the reliability of a result on the basis of factors that were not relevant to the process of arriving at such result. Given that the Montreal Laboratory did not rely upon the actual testosterone and epitestosterone concentrations in its methodology for calculating the T/E ratio, any objection based upon an alleged error in calculating such concentrations is entirely irrelevant. This was, in effect, the crux of Prof. Hemmersbach's expert testimony at the hearing in which he confirmed the following statement from his Expert Report:

> [...] the determination of an increased T/E ratio does not require an independent quantification of both testosterone and epitestosterone as suggested by the athlete at page 9 [recte 19] of her submission. The ratio may be, and is in most cases, established by directly comparing the sample's T/E result with the positive control urines with known T/E values. The estimated steroids concentrations are only indicated as additional information on the sample's steroid profile. In the case the actual quantifications of testosterone and epitestosterone are used for the T/E calculations, these quantifications have to be performed in a way that precision and accuracy is available for both of them.

104. The Athlete is on somewhat stronger ground with her second argument inasmuch it is based upon differences in the observed T/E ratio itself. There is no dispute that the "A" sample analysis indicated a corrected average T/E ratio of 37.82 while the "B" sample analysis indicated a corrected average T/E ratio of 79.31. As emphasized both in the Answer Brief and the oral submissions made at the hearing by counsel for the Athlete, there is a difference of more than 109% in the T/E ratio between the "A" sample and the "B" sample. It is the Athlete's contention that such "[v]ariability in the results regarding T/E ratio is, at the very least, uncommon, unclassifiable and far from technically permissible. This creates a more-than-reasonable doubt regarding the accuracy and correctness of the results obtained [...]".

105. In response, the IAAF argues that "the exact quantification of a sample with a T/E ratio in excess of 25 is unnecessary and irrelevant", since such a ratio is consistent only with exogenous administration of testosterone (Appeal Brief, para. 44, p. 9). From this point of view, as stressed by Professor Ayotte in her Witness Statement, "[w]hether the ratio found was in excess of 25, 85 or 2085 the conclusion would be the same" (Exhibit A-3, para. 33, p. 11, confirmed by her testimony during the hearing). Moreover, the IAAF submits that the difference in the results is readily and adequately explainable on

technical grounds: (i) the T/E ratio of the "A" sample was underestimated by the instrument used, which was unable to measure high ratios and calibrated to be very accurate at reading up to a ratio of only 15, and (ii) it was agreed by all present that a different procedure would be used for the analysis of the "B" sample (Appeal Brief, para. 45, p. 9).

106. The Panel does not disagree with the emphasis that the Athlete and her expert witness, Professor Gómez Bellver, place on the need for precision inherent to any quantitative analysis (Answer Brief, p. 20-21; Professor Gómez Bellver's Expert Report, Exhibit R-18, para. 15). As they correctly point out, Professor Ayotte acknowledges this very fact in one of her scientific publications. In particular, the Montreal Laboratory could have used a standard higher than 25 and a differently calibrated machine for the "A" sample analysis, given that a first screening revealed an estimated T/E ratio of 23. However, it should also be noted that the Montreal Laboratory employed the same procedure and same equipment to analyze 17 samples taken at the IAAF Grand Prix Meeting held in Rio de Janeiro on 6 May 2001 and all of these samples tested negative, with the exception of the sample provided by Ms. dos Santos. If there truly had been some defect or deficiency in the procedures or equipment employed by the Montreal Laboratory, one would expect that other samples would have tested positive, which was not the case (See by analogy IAAF Arbitration Panel, *Swiss Athletic Federation (SLV) and Sandra Gasser v. IAAF*, decision of 18 January 1988, reported in TARASTI, *op.cit.*, p. 117, 118).

107. Further, and more fundamentally, the Panel notes that it is a matter of common sense that precision is not an absolute concept: it must always be understood in connection with the purpose of the analysis. According to the clear wording of the Schedule 1, Part I of the IAAF Procedural Guidelines, the purpose of the tests for testosterone is to establish that the T/E ratio "so exceeds the range of values normally found in humans as not to be consistent with normal endogenous production". From this perspective, it is clear that, here again, the Athlete's arguments are based on an erroneous postulate, namely that the purpose of the analysis is to determine the exact T/E ratio in her urine. In the opinion of the Panel, the Montreal Laboratory's finding of a T/E ratio greater than 25 is sufficiently precise to establish that the T/E ratio of Ms. dos Santos vastly

exceeded the range of values normally found in humans. Accordingly, the Panel cannot accept the second argument advanced by the Athlete.

108. As to the actual figures, the Panel is satisfied that the differences between the results of the analysis of the "A" sample and of the "B" sample were due to technical reasons which do not cast any doubt on the reliability of such results, as was convincingly explained at the hearing by both Professor Ayotte and Professor Hemmersbach. In the view of the Panel, these differences do not therefore invalidate the results of the analysis, namely that the T/E ratio was greater than 25.

109. Nevertheless, it is necessary to consider whether there is any scientific or legal basis for objecting to the Montreal Laboratory's use of different procedures for the "A" sample analysis and the "B" sample counter-analysis.

110. When questioned on the methodological reliability of the procedure used for the "B" sample analysis, Professor Ayotte stated the following:

> The method shall fit the purpose. Normally, the purpose of the "B" sample is to confirm that the T/E ratio is greater than 6. Here the situation was so unusual that we had to show that it was in vast excess. There was no need to be very precise near the threshold because the values were far away.

111. From a legal perspective, neither the IAAF Rules, nor the IAAF Procedural Guidelines contain a provision that addresses this matter. As mentioned above, the Panel is entitled in such a case to seek some guidance from the principles set out in the OMAC. Under the heading "Guidelines for the analysis of the B sample", Section 2.2 of Appendix D to the OMAC requires that each laboratory must take the following procedural step:

> Explain the analytical methods used in the analysis of the A sample and explain which analytical method will be used to *analyze the B sample taking into account the result of the A sample.* As the purpose of the B analysis is only to demonstrate that the Prohibited Substance found in the A sample is also present in the B sample, *the analytical strategy for the B analysis may be simpler than the one used for the A sample, as far as the presence of the Prohibited Substance or its relevant metabolite is unambiguously established,* at the direction of the Director of the laboratory. (our emphasis)

112. Given that the purpose of the "B" sample analysis under the IAAF Rules is the same as that set out in the OMAC (see *infra* ¶ 116), the Panel finds that the Montreal Laboratory was entitled to adopt a different procedure for the testing of the "B" sample. This finding is further supported by the fact that the Montreal Laboratory adopted the procedure for the "B" sample "in light of the very high T/E ratio measured in the "A"

sample" (see *supra* ¶ 97) and that a T/E standard of 25 was chosen to show that the T/E ratio was greater than 25, which was the value of the "A" sample test to be confirmed (see *supra* ¶ 98). Moreover, the Panel notes that the Athlete's representative expressly agreed to this different procedure.

5.2.4 Conclusion on the T/E Ratio

113. After carefully considering the testimony of Professor Ayotte and the expert evidence of both Professor Hemmersbach and Professor Gómez Bellver, the Panel has come to the conclusion that the divergence in the T/E ratios reported for the "A" and "B" samples was due to the different methods employed to analyze these samples, that it was acceptable to employ such different methods and that the "A" sample analysis and the "B" sample counter-analysis therefore establish beyond any doubt that the Athlete's T/E ratio was greater than 25 to 1.

5.2 Does the "B" sample confirm the "A" sample?

114. A related but slightly different issue is whether the analysis of "B" sample confirms the results of the analysis the "A" sample. As became apparent at the hearing, the Parties have different views of the purpose of the "B" sample analysis. With respect to this issue, the Athlete relied upon the expert evidence of Professor Gómez Bellver that "the B analysis' purpose is to ensure that the A analysis was correct", which was not possible in the instant case because of the difference in the testing procedure adopted. On the other hand, the IAAF contended that the purpose of the "B" sample analysis is to confirm the result of the "A" sample analysis, which in the instant case was that the T/E Ratio was greater than 25.

115. The Panel agrees with the IAAF that the "B" sample analysis, as a matter of fact and law, confirms the "A" sample. This conclusion is based on Section 2.57 of IAAF Procedural Guidelines, which provides as follows:

> the reserve 'B' sample [is] to be tested to ascertain whether the sample discloses the presence of the same prohibited substance detected in the main 'A' sample.

This wording was adopted by the IAAF in the wake of the Sandra Gasser case, in which the athlete also invoked a difference in the results between the "A" and "B" samples. At that time, the relevant provision of the IAAF Procedural Guidelines (i.e., Section 5.e)

stated that the purpose of the second analysis was to "confirm the result of the analysis of the first sample". The English High Court held that, when properly construed, this provision could be paraphrased as follows: "if the analysis of the reserve sample confirms the presence of the doping substance" (*Sandra Gasser v Stinson and another*, Unreported, Blackwell & Partners, Transcript available on LEXIS).

116. Bearing in mind both the evolution in the wording of the IAAF Procedural Guidelines and the above-mentioned decision of the English High Court, the Panel is of the view that the language of Section 2.57 makes clear that the purpose of the counter-analysis of 'B' sample is not to confirm the correctness of the analysis of 'A' sample, but only to verify the presence of the prohibited substance (or the quantity of such substance) which gave rise to a positive finding in the 'A' sample. This interpretation is supported both by Section 2.2 of Appendix D to the OMAC (quoted above, see *supra* ¶ 111) and, in particular, by the "Help Notes for Athletes on Doping Control" attached to the IAAF Procedural Guidelines, which provide that "[t]he point of this test is to see if the findings of the 'B' sample confirm the adverse findings of the 'A' sample" (see Exhibit A-18, p. 38).

117. Given the above considerations, the present case is clearly distinguishable from the one in *UCI v. Hamburger*, in which the CAS held that "a counter analysis only make sense if the same test method is applied to both samples and if the rest results are evaluated pursuant to the same principles" (CAS 2001/A/345, *UCI c. Bo Hamburger*, Award of 28 January 2002, para. V.1.2.3.3, p. 19). In fact, in *UCI v. Hamburger*, the situation was exactly the opposite of the one in the instant case: the same procedure was followed for the analysis of both the "A" sample and the "B" sample, but there was a different basis for making a positive finding in regard to each sample (i.e., the "A" sample was found to be positive because the relevant value was greater than 80% while the "B" sample was also considered positive although it revealed a level of only 78.6%). By contrast, Ms. dos Santos' samples were found to be positive because they both exceeded the same level of testosterone (i.e., a T/E ratio of 25).

118. Having found that both the "A" sample and the "B" sample exhibited a T/E ratio greater than 25, the Panel concludes that the positive finding of doping in the "A" sample is confirmed by the results of the analysis of the "B" sample.

5.3 The Applicable Threshold for the T/E Ratio

119. The next question to be determined is whether the IAAF is correct in submitting that a T/E ratio greater than 25 to 1 "so exceeds the range of values normally found in humans as not to be consistent with normal endogenous production" and thus supports a positive finding within the meaning of Schedule 1, Part I (a)(I) of the IAAF Procedural Guidelines.

120. The IAAF regulations do not set out a specific threshold for the T/E ratio. Accordingly, the Panel once again finds it useful to seek guidance from the OMAC, which provides as follows (Appendix A, I.C.1.a/):

> The presence of a testosterone (T) to epitestosterone (E) ratio greater than six (6) to one (1) in the urine of a competitor constitutes an offence unless there is evidence that this ratio is due to a physiological or pathological condition, e.g. low epitestosterone excretion, androgen producing tumor, enzyme deficiencies.

121. This threshold T/E ratio of 6 was statistically calculated based upon the analysis of samples from male and female volunteers and athletes collected during the Moscow and Lake Placid Olympic Games, which had shown a mean T/E ratio of approximately 1 (C. AYOTTE, J.-F. LÉVESQUE, M. CLÉROUX, A. LAJEUNESSE, D. GOURDRAULT and A. FAKARIAN, *Sports Nutritional Supplements; Quality and Doping Controls*, Can. J. Appl. Physiol., 2b, Supplement, S120 (2001), p. 5; Exhibit A-II.2, p. 5). It is also worth noting that the 6:1 threshold set out in the OMAC has been recognized in the jurisprudence of IAAF Arbitration Panels as a threshold that provides a "large margin of safety in relation to normal values" (See TARASTI, *op.cit.*, p. 79). In the opinion of the Panel, it would be difficult to justify departing from this well-established standard in light of the ultimate purpose of any sports regulation, namely the establishment of a level playing field. Moreover, the Athlete has tendered no evidence on this point that justifies a departure from this standard in the instant case.

122. For these reasons, the Panel considers that the detection of a T/E ratio greatly in excess of 6:1 in the urine sample provided by Ms. dos Santos so exceeds the range of values normally found in humans as not to be consistent with normal endogenous production and, therefore, supports a positive finding of doping.

5.4 The Issue of the Longitudinal Study

123. Neither the Athlete nor her expert witness contest that a T/E ratio greater that 25 clearly exceeds the range of values normally found in humans. Nevertheless, the Athlete maintains that such a T/E ratio is not sufficient, in and of itself, to establish a positive finding of doping (Answer Brief, p. 17):

> [T]he IAAF omitted to carry out the legally required longitudinal study, [...] [and therefore], cannot declare the sample as positive for the study of which the legal requirements have not been observed.

124. With respect to the issue of the longitudinal study, the Parties disagree on (i) whether a longitudinal study is mandatory under the IAAF Rules and (ii) whether the investigation carried out by the IAAF actually constituted a longitudinal study.

5.4.1 Is a longitudinal study mandatory to establish the offence of doping?

125. Ms. dos Santos submits that "the IAAF has not carried out any longitudinal study of the athlete, so failing to comply with its obligation imposed on it by article 2.52 of the IAAF Doping Test Procedure Guidelines [i.e., the IAAF Procedural Guidelines]" (Answer Brief, p. 15). This provision states the following with respect to the need for a longitudinal study:

> Where the analysis of the main "A" sample indicates the presence of a prohibited substance, whose presence is capable of being attributable to physiological or pathological condition (e.g. testosterone, dihydrotestosterone, epitestosterone), the IAAF shall carry out such further tests upon the athlete as it considers appropriate to clarify the issue. It may also review, where available, the results of previous analysis of samples provided by that athlete. If, having conducted these further tests and reviewed previous analysis, the IAAF concludes that the results of the analysis of the original sample indicate the presence of a prohibited substance in a ratio or concentration which is consistent with normal endogenous production, the IAAF shall then inform the athlete's National Federation.

126. In reliance on this provision, Ms. dos Santos contends that "the IAAF *must* submit the athletes to complementary controls in order to clarify the case" (Answer Brief, p. 15, emphasis added). In its Reply, the IAAF submits that "there is no obligation in the IAAF Rules and Regulations, nor in the Guidelines for [...] a longitudinal study to be carried out".

127. Irrespective of the construction one places on the verb "shall" in Article 2.52 of the IAAF Procedural Guidelines, the Panel considers that this provision affords the IAAF a wide discretionary power as to the circumstances in which it considers a longitudinal

study to be appropriate. As a result, it cannot be seriously contended that a longitudinal study is mandatory as such under the IAAF Rules or regulations.

128. In addition to the wording of the IAAF Procedural Guidelines, the Athlete contends that "the International Olympic Committee also regulates the compulsory nature of the longitudinal study" (Answer Brief, p. 16). The IAAF submits that "the IOC Anti-doping Code [defined above as the OMAC] has no relevance to this case" (Reply Brief, para. 14, p. 5). As already noted, the Panel considers that the principles set out in the OMAC can only be taken into account for matters that are not directly addressed in the IAAF Rules or for which they do not offer a clear and comprehensive response. The IAAF Procedural Guidelines directly and comprehensively address the matter of longitudinal studies. Accordingly, there is no room for application of the OMAC. The Panel therefore finds that the Athlete's second line of argument also fails, and accordingly concludes that there was no mandatory requirement for the IAAF to undertake a longitudinal study.

129. Nevertheless, the IAAF admits that "at that time, [its] practice was to compile a longitudinal study reviewing both previous results and at least one subsequent result" and conducted itself as though such a study was required "[i]n order to *prove* that the elevated T/E ratio was due to the exogenous administration" (See Appeal Brief, para. 8, p. 2, emphasis added). CAS panels have taken into account a sporting federation's prior custom and practice in order to interpret its disciplinary provisions in a sense favourable to the athlete (CAS 95/141, *Chagnaud v. FINA*, Award of 22 April 1996, reported in *CAS Digest I*, p. 205 and comment by Simon in *Journal du droit International (Clunet)*, 2001 p. 282). In view of the CAS jurisprudence and the conduct of the IAAF, the Panel believes that it is appropriate to consider that a longitudinal study was required in order to establish that the elevated T/E ratio was due to the exogenous administration. Having come to this conclusion, it is necessary to consider whether the IAAF did, in fact, conduct a longitudinal study in the present case.

5.4.2 Did the IAAF carry out a longitudinal study?

130. In its Appeal Brief, the IAAF described its practice at the time in the following terms: "[B]efore the IAAF declares a sample positive for testosterone, it will conduct further investigations to establish whether the elevated T/E ration could be due to endogenous

production, or whether the results of the analysis are consistent only with artificial administration." This was done in the following way (Appeal Brief, para 7, p. 2):

> either by the preparation of a longitudinal study [...] and /or by the conduct Isotope Ratio Mass Spectrometry ("IRMS") analysis upon a portion of the suspicious sample.

131. With respect to the longitudinal study, it is undisputed that the Montreal Laboratory was in a position to compare the results from the Rio de Janeiro sample taken in 2001 with three previous samples provided by Ms. dos Santos between 1995 and 1997. The analysis of these previous samples revealed a normal T/E ratio ranging from 0.7 to 1.1. As Professor Ayotte explained at the hearing, this shows that the previous T/E ratios were stable before detection of an extremely high T/E in the Rio de Janeiro sample. This distinguishes the case of Ms. dos Santos from that of an athlete who has exhibited elevated T/E ratios throughout his or her career. In these circumstances, the IAAF had sufficient information to properly conclude, in accordance with the discretion afforded to it by Article 2.52 of the IAAF Procedural Guidelines, that it was not necessary to carry out further tests.

132. Having held that the OMAC is not applicable in regard to the issue of the longitudinal study, it is not necessary to consider whether the IAAF complied with the additional requirements set out in the OMAC, namely whether at least three unannounced test were carried out following the positive finding of doping. For this reason, the Panel need not, and will not, speculate about the "suspicious" results of the analysis carried out on the Madrid sample, in order to conclude that a longitudinal study has corroborated the other evidence of an endogenous administration of testosterone.

133. Moreover, the Panel notes that the results of the IRMS analysis conducted on the "A" sample, disclosing the presence of synthetic testosterone, provides sufficient evidence for the IAAF to make a positive finding of doping without having to carry out any further test. In other words, the IAAF had more than enough evidence to conclude that the high T/E ratio found in the Rio de Janeiro sample was not consistent with normal endogenous production.

134. On the basis of the above considerations, the Panel finds that the IAAF did, in fact, carry out a longitudinal study consistent with its regulations and previous practice. Accordingly, there is no need to consider whether the alleged departure from the

relevant IAAF regulations would have been material to the validity of the positive finding. Notwithstanding these conclusions, it remains possible for the Athlete to prove that her elevated T/E ratio was due to pathological or physiological factors.

5.5 Was the Elevated T/E Ratio caused by Pathological or Physiological Factors?

135. As already discussed (see *supra* ¶ 83), once the IAAF has discharged its burden of proving that the quantity of testosterone detected in the Athlete so exceeds the range of values normally found in humans as not to be consistent with normal endogenous production, the Athlete bears the burden of proving by clear and convincing evidence that the quantity of testosterone found is attributable to a pathological or physiological condition.

136. At an early stage in the proceedings before the IAAF, the Athlete raised the argument that her elevated T/E ratio may have been caused by a physiological factor, namely her Indian origin. However, the Athlete did not pursue this argument before this Panel and, at the hearing, her counsel made clear that no reliance was being placed on any kind of physiological condition. Accordingly, the Panel will disregard the contention made in the Athlete's first explanation of 4 August 2001 (Exhibit A-14, p. 13) in regard to the possible effects of "congenital adrenal hyperplasia".

137. While Dr. Gómez Bellever stated in his Expert Report that "[t]here is clear evidence that physiological and/or pathological reasons can exist for the T/E ratio in the sample from Fabiane dos Santos being >6 (high systematic evidence)", he testified under cross-examination that he was not aware of any study conducted on the Athlete or any other clear evidence showing specific pathological or physiological conditions that could have influenced her T/E ratio within the meaning of the IAAF Procedural Guidelines.

138. The Panel therefore concludes that there is no evidence whatsoever before it, let alone evidence of a clear and convincing nature, that the abnormal T/E ratio or testosterone concentration detected in Ms. dos Santos is attributable to a pathological or physiological condition.

5.6 Conclusion

139. On the basis of the evidence, the Panel is satisfied that the Athlete's T/E ratio was greater than 25 and thus inconsistent with normal endogenous production and so finds. The longitudinal study carried out by the IAAF provides corroborative evidence of an exogenous administration of testosterone.

6. IRMS ANALYSIS DEMONSTRATES THAT SYNTHETIC TESTOSTERONE WAS EXOGENOUSLY ADMINISTERED

6.1 General

140. From a practical point of view, the T/E ratio method has the disadvantage of being both "time consuming and complex" (AYOTTE / LÉVESQUE / CLÉROUX / LAJEUNESSE / GOURDRAULT / FAKARIAN, *op. cit.*, p. 5; Exhibit A-II p. 5). From a legal point of view, the main disadvantage of the T/E ratio method is that it only provides indirect evidence of an exogenous administration of testosterone, which can be particularly problematic in border-line cases. In this context, it is worth quoting the opinion of the United States Court of Appeals for the Seventh Circuit which, in a decision of 27 March 2001 concerning another IAAF testosterone case:

> We hope that at some juncture, science will develop a means for detecting exogenous testosterone in athletes, such that an athlete's T/E ratio of 11.6:1 can be discounted if it is based on innocent factors. (*Slaney v. Int'l Amateur Ath. Fedn*, (7th Cir. Ind. Mar. 27, 2001); II, 4, 7th para. not reprinted in 244 F.3d 580, available on LEXIS).

141. In fact, science has already developed such a means: Isotope Ratio Mass Spectrometry ("IRMS"). IRMS analysis is based upon the differences observed between the carbon isotopic ($^{13}C/^{12}C$, expressed as δ 13 C ‰) content of molecules of natural origin compared to that of molecules of synthetic origin. Modern devices are able to identify this isotopic difference and, consequently, determine definitively whether testosterone detected in an athlete's fluids is of natural or synthetic origin (See W. SCHÄNZER, *Neuere Enwicklungen in der Dopinganalytik*, in Vieweg (Ed) Doping: Realtät und Recht, Berlin, 1997, p. 51, 59-61).

142. The main difference between the T/E ratio method and the IRMS technique is that the latter provides direct evidence of the exogenous administration of testosterone (see, for instance, Wilhelm SCHÄNZER, *Dopinganalytik, und Grenzwertproblematik*, in

Röhricht/Vieweg (Ed.) Doping-Forum, Stuttgart, 2000, p. 17, 22). Compared with the T/E ratio method, the IRMS analysis has two mains advantages:

- Since the administration of testosterone can be established on the basis of one single urine sample, there is no need for any longitudinal study.
- Since IRMS directly establishes the exogenous administration of testosterone, athletes confronted with IRMS evidence cannot invoke the endogenous production defence (i.e., that the quantity of testosterone found is attributable to a pathological or physiological condition).

In other words, IRMS analysis provides, in and of itself, an independent and sufficient basis for finding that an athlete has committed a doping offence.

Before turning to the results of the IRMS analysis carried out on the sample given by Ms. dos Santos, the Panel shall examine whether the results of such analysis constitute admissible evidence in the present appeal.

6.2 *Admissibility and Relevance of IRMS Evidence*

6.2.1 *General reliability of IRMS analysis from a scientific point of view*

143. With regard to the significance of an IRMS analysis, the Athlete makes the following submission (Answer Brief, p. 23):

> [T]he IRMS analysis method is not currently part of the normally accepted analysis and counter-analysis process, being considered to be a complementary test which for verification needs to be accompanied by other analysis, which has not been the case here.

144. At the hearing, Professor Gómez Bellver, expert witness for the Athlete, confirmed the following opinion set out in his Expert Report (Exhibit R-18, para. 53):

> The IRMS technique used officially after the Sydney Olympic Games in some doping control laboratories cannot be considered, for the time being, as final test. Firstly, it cannot be used as final value since specific ethnic factors exist [Footnote citing Prof. Cardoso Report referred to supra at ¶ 53], and of health habits that can produce changes in the magnitude of the administration effects of exogenous testosterone (as for change in δ 13 C), and secondly because it has not defined itself a criteria uniformity upon the existing exceptions (false positive) in the different doping control laboratories accredited by the CIO, through the lack of casuistry until now.

145. With respect to the "ethnic factor", the Panel first notes that, at the hearing, the Athlete's counsel emphasized that Ms. Dos Santos had never submitted that such a factor accounted for her elevated T/E ratio. As to the risk of a "false positive", the Panel notes that the very purpose of an IRMS analysis is to detect the origin of testosterone

and thereby eliminate the risk of a "false positive" normally associated with the T/E ratio methodology. The fact that not all IOC accredited laboratories are presently equipped with IRMS analysis devices is immaterial since Section 2.60 of the IAAF Procedural Guidelines expressly permits the IAAF to "order that the sample be transferred from an IOC accredited laboratory to another for the purpose of conducting Isotope Ratio Mass Spectrometry analysis (IRMS)". In any event, the current inability of certain laboratories to carry out IRMS analysis does not mean that the method itself is unable to provide conclusive scientific evidence. Furthermore, the Panel can not accept Professor Gómez Bellver's assertion that IRMS "cannot be considered, for the time being, as final test". This statement can not be reconciled with the other passage, in the same sentence, where Professor Gómez Bellver recognizes that this method has been in official use since the Sydney Olympic Games (actually, since the beginning of 1999; see SCHÄNZER, *Neuere Enwicklungen, cit*, p. 21).

146. Finally, there have been many CAS precedents in recent years where IRMS analysis has been found to provide reliable scientific evidence of an exogenous administration of anabolic agents (See CAS 98/192 *UCI v. S., DCU and DIF*, Award of 21 October 1998, reported in *CAS Digest II*, p. 205, 220, para. 29 in which a positive finding of DHEA was made based on GC/IRMS analysis). With respect to the specific issue of testosterone, the CAS panel in *Susin v. FINA* made the following finding:

> Based upon the above analysis, the Panel has concluded that: (a) the IRMS analysis provides conclusive scientific evidence of an exogenous administration of testosterone and; (b) the Panel is entitled to rely upon the IRMS analysis as an independent and sufficient basis for finding that the Appellant committed a doping offence under FINA Rule DC 2.1(a).
>
> (CAS 2000/A/274 *Susin v. FINA*, Award of 19 October 2000, p.35, para. 220, reported in *CAS Digest II*, p. 389, 399, para. 29).

6.2.2 Reliance on IRMS analysis in a CAS arbitration under the IAAF Rules

147. In the version of Schedule 1 of the IAAF Procedural Guidelines relied upon by both the IAAF and the Athlete (Exhibit A-18, p. 18; Exhibit R-16), it is expressly stipulated that "[e]vidence obtained from metabolic profiles and/or isotopic ratio measurements may be used to draw definitive conclusions" in regard to a positive finding of testosterone. In a newly drafted introduction to Schedule 1, the latest version of the IAAF Procedural Guidelines clarifies the purpose of IRMS analysis:

> Evidence may be obtained from metabolic profiles and/or the measurement of isotopic ratios (isotope ratio mass spectrometry) to draw definite conclusions as to the exogenous origin of a Prohibited Substance or its metabolites.

148. In a previous award concerning an appeal by the IAAF, the CAS held that, insofar as it "simply codifies the state of the relevant law previously applicable", this provision could be relied upon irrespective of which edition of the IAAF Procedural Guidelines actually applies to the appeal. Accordingly, the CAS panel in that case concluded that IRMS results "provide a second independent proof of [the athlete]'s doping violation" (CAS 2002/A/362 *IAAF v/CAF & Zubek*, paras. 42 to 45, pp. 10-11). As a matter of principle, the Panel sees no reason to reach a different conclusion in the present case.

6.2.3 The IRMS analysis in the present case

149. Although IRMS evidence has been recognized as a separate method (i.e., independent of evidence as to the T/E ratio) for establishing a doping offence for testosterone under the IAAF Rules, it is surprising that, in the present case: (a) the IAAF seemed to consider the IRMS analysis merely to be a supplementary test "in order to prove that the elevated T/E ratio was due to exogenous administration of testosterone" (Appeal Brief, para. 8, p. 2); and (b) the IAAF only filed evidence of the IRMS analysis on the Rio de Janeiro "B" sample at a very late stage in the hearing (see Exhibit T-3). The IAAF conduct in this regard raises two issues: (i) Is the Panel bound to follow the legal argumentation advanced by the IAAF? and (ii) Is the Panel entitled to rely on the results of the IRMS analysis on the "B" sample? The Panel will address each of these issues in turn, recalling that Article R57 of the CAS Code provides that it "shall have full power to review the facts and the law".

150. The first issue relates to the Panel's scope of review in law. In light of the wording of Article R57 of CAS Code, it is quite clear that the Panel may rely on IRMS evidence as an independent basis for finding that a doping offence was committed, irrespective of the conduct of the IAAF. For the sake of clarity, the Panel wishes to point out that the IAAF expressly quotes the CAS jurisprudence regarding the evidentiary import of IRMS analysis under the IAAF Rules in its Reply and, consequently, the issue of the IRMS analysis has been on record since 2 September 2002.

151. The second issue, namely the admissibility of the results of the IRMS analysis on the "B" sample (Exhibit T-3), is more complex and requires analysis under both the applicable procedural rules and the procedural requirements existing in law.

152. With respect to the applicable procedural rules, CAS panels have consistently held that the "full power to review the facts" afforded by Article R57 of the CAS Code has the following significance in regard to evidentiary matters:

> Accordingly, the Panel was not limited to consideration of the evidence that was adduced before the [previous instance], but considered all evidence, oral and written, produced before it.
> (CAS 98/211 *Michelle Smith v. FINA*, Award of 7 June 1999, reported in *CAS Digest II*, p. 255, 257).

153. In the case at hand, the Panel has already ruled that Exhibit T-3 is admissible because the IAAF filed this document before the evidentiary proceedings were closed. Insofar as the applicable procedural rules are concerned, the Panel is therefore satisfied that it is entitled to rely upon Exhibit T-3.

154. Turning to the fundamental procedural requirements existing in law, Article 182(3) of the Swiss Private International Law Act sets out the following general procedural principle that must be respected "irrespective of the procedure chosen":

> [T]he arbitral tribunal shall accord equal treatment to the parties and their right to be heard in an adversarial proceeding.

155. In the jurisprudence of the Swiss Federal Supreme Court, it has been held that the right to be heard in adversarial proceedings specifically guarantees each party's right to participate in the evidentiary proceedings, to rebut allegations made by the opposite party, to examine and criticize evidence adduced by the opposite party and to bring its own evidence in rebuttal before an award is rendered to its detriment (see for instance Bull. ASA 1999, 537, 541-542; Bull. ASA 1998, 118, 125; Bull. ASA 1998, 653, 658; Bull. ASA 1997, 291, 306; ATF 119 II 386, 388-390; ATF 117 II 346, 347-348; ATF 116 II 639, 642-643). The Swiss Federal Supreme Court has also consistently held that a party must immediately protest if it considers that its right to be heard has been violated, failing which the party shall be deemed to have waived the right to protest at a later stage (Bull. ASA 2000, 96, 102; ATF 119 II 386).

156. In the present case, the Athlete's counsel stated during the hearing that the IAAF's filing of the IRMS analysis on the "B" sample at a late stage of the hearing illustrated

the unfair way in which the IAAF conducted the entire doping control proceeding. Moreover, the Athlete's counsel also submitted that Exhibit T-3 was incomprehensible, and that it would be inadmissible to condemn an athlete relying upon such an "incomprehensible" document. Nevertheless, the Panel must emphasize that the Athlete's counsel did not object to the filing of the new IRMS results and, although invited to do so by the President, declined to cross-examine Professor Ayotte on this new evidence (see *supra* ¶ 48-49). Moreover, the Panel recalled *sua sponte* Professor Ayotte and questioned her on the results set out in Exhibit T-3. As will be demonstrated below, Professor Ayotte explained the figures contained in Exhibit T-3 in a convincing way.

157. The Panel would expect that a leading international sporting federation such as the IAAF would have tendered all available and relevant evidence at the earliest possible stage in the proceeding. Although it is deeply concerned by the IAAF's late filing of the IRMS analysis on the "B" sample in this case, the Panel is satisfied that the Athlete was given fair opportunity to address this evidence and, accordingly, that it may rely on the IRMS analysis in this appeal without violating the fundamental procedural guarantees set out in Article 182(3) of the Swiss Private International Law Act.

158. For all of the above reasons, the Panel concludes that it is entitled, from both a factual and legal perspective, to rely upon the IRMS analysis of the "A" and "B" samples in this appeal. The Panel shall next address the results of the IRMS analysis.

6.3 The Results of the IRMS Analysis

6.3.1 The "A" Sample Analysis

159. The results of the IRMS analysis of the "A" sample are set out in Analysis Summary dated 25 May 2001 (Exhibit A-9, p. 24, see *supra* ¶ 10) and explained in Professor Ayotte's letter dated 11 June 2002 in the following terms (Exhibit A-9, p. 1, emphasis added):

> We have carried out the GC/IRMS analysis of the specimen and found that the $\delta\ ^{13}C/^{12}C$ ‰ values of the androgens metabolites, androsterone and etiocholanolone as well as the androstandiols *were consistent with the synthetic (as opposed to a natural)_origin.* The value of androsterone and etiocholanolone were –31.26 and –31.88 respectively, whereas cholesterol and pregnanetriol were respectively measured at – 25,74 and –25,33. The ratios A/Pgtriol and Etio/Pgtriol were 1.23 and 1.25 showing their different isotopic content. (our emphasis)

160. In her Witness Statement, Professor Ayotte stated again that these results are "consistent with the source of the metabolite being from artificial administration, rather than endogenous production" (Exhibit A-3, para. 16, p. 6). Moreover, at the hearing, she confirmed once again that the results of the IRMS analysis of the "A" sample "clearly show the synthetic origin of testosterone". Professor Hemmersbach interpreted these results in the same way (Exhibit A-3, emphasis added):

> The $^{13}C/^{12}C$ isotope ratio of testosterone metabolites in sample 072048 were determines and compared with steroids not involved in testosterone metabolism. The $^{13}C/^{12}C$ ‰ values of –31 for the testosterone metabolite compared to –25 for cholesterol and pregnantriol *clearly indicate the non-endogenous origin of testosterone.*(our emphasis)

161. Neither the Athlete nor Professor Gómez Bellver contested that the IRMS analysis of the "A" sample established an exogenous administration of testosterone.

6.3.2 The "B" Sample Analysis

162. According to Professor Ayotte's Witness Statement, the results of the IRMS analysis carried out on the "B" sample on 6 and 7 August 2001 were also " consistent with the administration of an external source of testosterone" (Exhibit A-3, para. 27, p. 9). As noted above, the IAAF did not produce actual results of this IRMS analysis until late in the hearing (see Exhibit T-3). When questioned by the Panel, Professor Ayotte explained the relevant figures and testified that they disclosed values of androsterone and etiocholanolone of –31.44 and –1.72 respectively, whereas cholesterol and pregnanetriol were respectively measured at –26,09 and –25,86. Professor Ayotte further testified that A/Pgtriol and Etio/Pgtriol ratios around 1.23 correspond exactly with the data reported by the scientific literature in cases of an exogenous administration of testosterone.

163. The Panel is fully satisfied that these results confirm the positive results of the IRMS analysis carried out on the "A" sample. Moreover, the Panel notes that the IRMS analysis of the "B" sample not only confirms the exogenous administration of testosterone (which is the only relevant finding in order to establish the doping offence), but also demonstrates certain striking similarities between the two samples, in particular with respect to the A/Pgtriol and Etio/Pgtriol ratios (1.23 and 1.25 in the "A" sample as compared to 1.22 and 1.23 in the "B" sample).

6.4 Conclusion

164. For all of the above reasons, the Panel concludes that the IRMS analysis provides further independent proof of an exogenous administration of testosterone, which is sufficient, in and of itself, to establish beyond reasonable doubt that the Athlete committed a doping offence.

7. THE ATHLETE'S ALLEGATION THAT "A" SAMPLE AND "B" SAMPLE ARE NOT FROM THE SAME PERSON

165. In her Answer Brief, the Athlete alleged that the differences in the results of analysis of the "A" sample and the "B" are "so significant that, from a scientific point of view, it is impossible for both urine samples to belong to the same person". If this allegation were found to be justified, it would obviously invalidate the results of both the T/E ratio analysis (Answer Brief, p. 23) and the IRMS analysis (Answer Brief, p. 23). At the hearing, Professor Gómez Bellver confirmed the following statement made in his Expert Report (Exhibit R-18):

> Supposing that all the methodological and technical requirements have been rigorously adhered to by the Montreal laboratory, the principal hypothesis which support the non existence of concordance in the analytical results of sample 072048A and 072048B is: there exist a high probability that the urine sample stored in recipients A and B do not come from the same individual".

166. This argument has raised in several previous IAAF doping cases and was extensively discussed in the above-mentioned case of *Gasser v Stinson*. When this case went before the English High Court, Scott J, as he then was, observed the following regarding the confirmation of the 'A' sample by the 'B' sample:

> If, [...] the second analysis [i.e. the 'B' sample] contained such differences from the first analysis as to engender doubt as whether it is an analysis of the same urine, it may be difficult or impossible to regard the second analysis as confirming the presence of the doping substance in the urine that was first analysed.
>
> [...] If tests are properly carried out, urine from the same sample will show the same, or very similar, steroids profile if subjected to two different analyses.
>
> (*Sandra Gasser v Stinson and another*, Unreported, Blackwell & Partners Transcript available on LEXIS)

167. The Athlete's position is straightforward: a significant deviation in the results can be explained only in two ways – either the analyses were imprecise (and thus the results are invalidated), or the samples were not from the same athlete (and thus since it is impossible to confirm the "A" sample, the athlete must be found not guilty). These are

not, however, the only two explanations for such a deviation in the results. Indeed, as the English High Court accepted in *Gasser v Stinson*, there is a third possible explanation: a difference in the method of analysis employed for the two samples. As stated by Scott J., "it seems contrary to common sense" not to consider this explanation (*Sandra Gasser v Stinson and another*, Unreported, Blackwell & Partners, Transcript available on LEXIS).

168. For the reasons given above in regard to the Athlete's challenge to the reliability of the T/E ratio analysis, the Panel is persuaded that the difference in the results is explained by the fact that different methods of analysis were used.

169. Finally, and most importantly, it must be pointed out that an aliquot of the "A" sample was conserved and tested with the "B" sample and according to the same methodology (See Exhibit R-9 = Exhibit A-9 p. 53). In fact, the T/E ratio of the residual "A" sample aliquot was found to be 84.18, which is quite similar to the average T/E ratio of the three "B" sample aliquots (i.e., 79.31), and precisely equal to one of the "B" sample aliquots (the T/E ratio of aliquot three from the "B" sample was 84.18).

170. Given the above considerations and the fact that Ms. dos Santos has never suggested that there was any break in the chain of custody (Answer Brief, p. 23), the Panel finds that there is no credible basis for the allegation that the "A" sample and the "B" sample were not taken from the same athlete.

8. THE ATHLETE'S SUBMISSION THAT PROF. AYOTTE AND PROF. HEMMERSBACH ARE NOT INDEPENDENT

171. In the submission of the Athlete, Professor Ayotte and Professor Hemmersbach "have a direct interest in this appeal, and they have a partial and subjective opinion in favor of the IAAF" for which they are allegedly both working, "receiving from it fees for professional services, daily expenses, salaries or financial recompenses for the service referred". On this basis, Ms. dos Santos requested that all evidence provided by both Professor Ayotte and Professor Hemmersbach "be invalidated and declared null, with no value whatsoever for the purpose of creating opinion in the Tribunal, under the risk that the Resolution issued on the basis of them incur nullity" (Appeal Brief, pp. 4-5).

172. In support of this submission, Ms. dos Santos points out that that Professor Ayotte and Professor Hemmersbach are both currently scientific counsel with the IAAF. Moreover, in regard to Professor Ayotte, Ms. dos Santos also relies upon the fact that she was a Member of the IAAF Doping Commission between 1995 and 1999, that she received some financial benefit for transferring the copyright of one of her numerous articles to the IAAF , and that she heads a laboratory that has an exclusive agreement with the IAAF to carry out the analysis for all doping tests conducted in South America (Answer Brief, p. 4).

173. Article 184 of the Swiss Private International Law Act provides that: "[t]he Arbitral Tribunal shall itself conduct the taking of evidence". Pursuant to this provision of Swiss law, it is generally recognized that, in the absence of a specific agreement between the parties and within the limits of due process, an arbitral tribunal has a broad discretion to determine the admissibility and weight of the evidence adduced by the parties (See Lalive/Poudret/Reymond, *Le droit de l'arbitrage interne et international en Suisse*, Lausanne, 1989, p. 371). With this principle in mind, the Panel wishes to make the following observations in regard to the Athlete's challenge of the independence of Professor Ayotte and Professor Hemmersbach.

174. With respect to Professor Ayotte, the Panel first notes that she appeared as a fact witness rather that an expert witness. As such , Professor Ayotte's evidence is primarily to be assessed on the basis of credibility rather independence. While Professor Ayotte has several ties with the IAAF, the Panel finds that none of these ties casts any doubt on the credibility of her factual evidence. At the hearing, Professor Ayotte confirmed that she has been a Member of the IAAF Doping Commission and the IAAF Scientific Counsel, but she denied receiving any remuneration in this regard from the IAAF. Professor Ayotte testified that the IAAF once paid her USD 150 for the copyright to an article but she stated that she did not receive any compensation for the article cited by the Athlete. With respect to the relationship between the Montreal Laboratory and the IAAF, it is inevitable that there should be some kind of relationship between the international federation ordering the doping control and the laboratory instructed to conduct the analysis and a certain level of exclusivity in this relationship is inherent in the system of accreditation for the anti-doping laboratories. This is essential to ensure

the reliability of the analysis, and the ability to compare the results of different laboratories, which is so strongly advocated by Ms. dos Santos (see *supra*, ¶ 100).

175. Turning to Professor Hemmersbach, the Panel notes that he testified at the hearing that he was aware of and would comply with the principles governing the duties and responsibilities of expert witnesses as summarized in *The Ikarian Reefer* case (*National Justice Compania Naviera S.A v. Prudential Assurance Co. LTD.* [1993] 2 Lloyd's Rep. 68). Although these principles are not directly relevant for an arbitral tribunal sitting in Switzerland, the Panel considers that they correspond to the standards generally applicable in international arbitration and are compatible with the arbitral tribunal's discretion to decide on the admissibility and relevance of evidence. Furthermore, Professor Hemmersbach appeared as a party-appointed expert and, as a consequence, he is not subject to the very stringent requirements of independence that Swiss law imposes on expert witnesses appointed by arbitral tribunals. Moreover, at the hearing, Professor Hemmersbach explained that, although he was a Member of the IAAF' Scientific Advisory Board, he has never been employed by the IAAF. After considering all of the above factors, the Panel is not persuaded that there are sufficient grounds for excluding the expert evidence of Professor Hemmersbach on the ground of a lack of independence.

176. As shown by the *curricula vitae* attached to their written evidence, Professor Ayotte and Professor Hemmersbach are both very well-qualified individuals. The Panel believes that these witnesses made every effort to give accurate and reliable evidence and, accordingly, finds that there is no valid reason to exclude or even give diminished weight to their evidence.

177. The Panel also wishes to observe that it does not accept the IAAF's objections as to the independence and professional qualifications of Professor Gómez Bellver, the Athlete's expert witness.

178. For all of the above reasons, the Panel is not prepared to exclude or disregard any witness evidence tendered by the Parties but rather has considered and evaluated the evidence of all fact and expert witnesses in accordance to the powers vested in it by Article 184 of the Swiss Private International Law Act.

9. THE ATHLETE'S SUBMISSION THAT THERE WAS A VIOLATION OF 'DUE PROCESS'

179. As a final matter, Ms. dos Santos submits there was an "infraction to the Athlete's right to defence and of the right to a fair proceedings in order to prove her innocence" (Answer Brief, p. 25). In support of this submission, Ms. dos Santos argues that: (a) she did not receive the documentation regarding the results of the analysis on the Rio de Janeiro sample prior to 28 September, 2001, which is more than four months after having undergone the doping control and almost two months after having been suspended (Answer Brief, p. 25); and (b) the CBAt only notified her the first hearing on 23 August 2001, "and even then, without including the analytical results from the Montreal test or any other alleged piece of evidence, thus infringing the athlete's right to defence, since it did not allow the athlete to adequately prepare explanation an adequate answers" (Answer Brief, p. 26).

180. The Panel wishes first to note that a finding of doping has very serious consequences for a competitive athlete and, that is imperative that the fight against doping must not even deprive an athlete of due process. In this regard, the Panel also wishes to express its concern about a matter that was not raised directly by Ms. dos Santos but nevertheless needs to be addressed: the fact that the hearing before the CBAt Sport High Court was held more than 10 months after the suspension of the Athlete, notwithstanding the fact that IAAF Rule 21.1 requires the hearing to "take place as soon as possible and under normal circumstances, [...] not later than three months after the final laboratory analysis". In the opinion of the Panel, the IAAF has an obligation to exercise the same efforts to ensure that its member federations comply with such critical procedural protections for athletes as it exercises in pursuing the fight against doping. Having made this observation, the Panel will address the complaint advanced by Ms. dos Santos.

9.1 Proceeding before the CBAt Sport High Court

181. In order for Ms. dos Santos to prove that there was a violation of due process, she must establish that: (a) her right to a fair trial was violated as a result of deficiencies in the procedure leading to the hearing before the CBAt Sport High Court; and (b) that this violation has not been cured.

182. It is well established that the requirements of due process apply to internal tribunals established by sporting federations (see for instance J.W. SOEK, The Fundamental Rights of Athlete in Doping Trials, in Drugs and doping in sport: socio-legal perspectives, London-Sydney, 2001, *passim*; P. ZEN-RUFFINEN, *Droit du sport*, Zurich, 2002, paras. 1393-1394, pp. 488-489). However, in the present case, the Athlete relies upon procedural irregularities that, as a matter of fact, had no adverse impact on her whatsoever. The procedural irregularities at issue occurred in the context of the proceedings before the CBAt Sport High Court. At the conclusion of these proceedings, the CBAt Sport High Court found in favour of the Athlete and ruled that she was not guilty of a doping offence. Ms. dos Santos has not demonstrated that the alleged procedural irregularities have had any continuing adverse impact on her and, as a result, the Panel concludes that such procedural irregularities, if any, were, in effect, cured by the ultimate outcome of the proceedings before the CBAt Sport High Court. In this connection, the following precedent is apposite:

> "Il est vrai que le Tribunal Arbitral du Sport a constaté une violation du droit d'être entendu par une instance de l'UEFA, mais il a estimé que celle-ci avait été réparée devant l'instance supérieure disposant d'un pouvoir de libre examen. Cette opinion est conforme à la jurisprudence existant en Suisse (ATF 126 V 130 consid. 2b, 124 V 180 consid. 4a, 389 consid 5a, 114 Ia 307 consid. 4a), de sorte qu'elle ne viole en rien l'ordre public." Tribunal fédéral 4P.64/2001, *Abel Xavier v. UEFA*, Decision of 11 June 2001, para. 2(d)(aa) not reported in ATF 127 III 429, reprinted in ASA Bulletin 2001, p. 566, 571-572

183. Moreover, Article R57 of the CAS Code provides that an appeal arbitration proceeding involves a hearing *de novo*, which means that:

> issues of the fairness or otherwise of the hearing before the tribunal of first instance fade to periphery [...] allow[ing] any defects [...] to be cured by a hearing before CAS.
>
> (CAS 98/208 *Lu Na Wang et al. v. FINA*, Award of 22 December 1998, *CAS Digest II*, p. 234, 247; CAS 98/211, *Michelle Smith v. FINA*, Award of 7 June 1999, *CAS Digest II*, p. 255, 264,

> para. 8, both referring by analogy to *Calvin v. Carr* 1980 AC 574, 592-593. See also CAS 94/129, *USA Shooting & Quigley. c. UIT*, Award of 23 May 1995, *CAS Digest I*, p. 187, 203, para. 59; CAS 2001/A/345, *Roland Meier c. Swiss Cycling*, Award of 28 January 2001, para. V.2, p. 9)

184. In this appeal arbitration proceeding, the Panel has granted Ms. dos Santos a full opportunity to present her case both in fact and in law. She was free to tender any kind of fact and expert evidence and was permitted to cross-examine the witnesses called by the IAAF. Moreover, Ms. dos Santos had the opportunity to counter all of the arguments raised by the IAAF through both written and oral submissions to the Panel. With respect to the specific issue of the IAAF's late filing of the IRMS analysis of the "B" sample, it has already been noted above that the Athlete's counsel did not object to the admissibility of this new evidence and chose not to avail himself of the opportunity granted by the Panel to cross-examine Professor Ayotte on this new evidence (see *supra* ¶ 48-49 and 156). Given all of these facts, the Panel finds that the alleged violations of due process in the proceeding before the CBAt Sport High Court have, in any event, been cured by this appeal arbitration proceeding before the CAS.

9.2 The Athlete's Provisional Suspension

185. Beyond the alleged procedural irregularities leading up to the hearing before the CBAt Sport High Court, Ms. dos Santos also argues that the proceedings that lead to her provisional suspension violated the principles of due process, as shown by her request that the Panel (Answer Brief, pp. 2 and 10):

> denounce the suspension of the Athlete carried out in bad faith by the IAAF on 2 [recte: 4] August 2001 (the doping test was carried out on 6 May 2001), without respecting the legal procedures, with the aim of impeding her participation just a few days before the start of the 2001 World Athletics Championship in Edmonton (Canada), since the athlete had the second fasted time of 1'57''16, and had good possibilities of becoming World Champion, all of which has caused her serious damages.
>
> On August 7 2001, Ms. Fabiane dos Santos, heard of her suspension through the press, Her suspension was confirmed the same day by CBAt. She was prohibited of participating in the Edmonton World Athletic Championship-2001, despite the fact that she had never been notified of the results of the analyses, nor had she received or had the opportunity to examine the documentation regarding her case, including reports.

186. As a first matter, the Panel does not consider that this issue falls within the scope of its jurisdiction, which is to decide whether or not a doping offence has been committed and, if so, what sanction should be imposed.

187. Subject to the foregoing, the Panel will nevertheless offer the following comments. The provisional suspension imposed on Ms. dos Santos was entirely consistent with the disciplinary framework of the IAAF, which sets out the following "three stage" procedure: "(i) suspension; (ii) hearing; (iii) ineligibility." (IAAF Rule 59.1). With respect to the first stage in this procedure, IAAF Rule 59.2 provides as follows:

> The athlete shall be suspended from the time the IAAF, or, as appropriate, an Area or a Member, reports that there is evidence that a doping offence has taken place.

188. Under IAAF Rule 59.3, "every athlete shall have the right to request a hearing before the relevant tribunal of his National Federation" but this right arises "before any decision on eligibility is reached". In other words, the IAAF Rules provide that a provisional suspension can be (and actually was in the present case) ordered without any hearing. Since the jurisdiction of the CAS is limited to examining the correctness of the decision resulting from any such hearing, all questions relating to the provisional suspension of Ms. dos Santos fall outside the jurisdiction of this Panel.

189. The Panel notes however that it is not unusual for athletes to be suspended provisionally on the eve of a very important competition on the basis of a doping control carried out previously. While the Panel appreciates that Ms. dos Santos may consider this situation to be profoundly unjust, it is entirely consistent with the IAAF Rules.

190. Similarly, the IAAF's suspension of the Athlete after her exoneration by the CBAt Sport High Court was also entirely consistent with the IAAF Rules. The Panel notes that the IAAF adopted a new version of IAAF Rule 59.4 in the year 2000 for the very purpose of preventing national federations from exonerating athletes in order to enable them to participate in important competitions pending an appeal by the IAAF. Moreover, it should be noted that a suspension pending a hearing before the CAS does not presuppose a hearing (See TARASTI, *op. cit*, p. 102). In this respect, the Panel observes that, failing a request for preliminary relief, this question equally falls outside the scope of its jurisdiction.

9.3 Conclusion

191. For the above reasons, the Panel finds that none of the Athlete's fundamental rights have been violated in this case and that in all of the proceedings leading to and including the present Appeal, due process has been observed. The Athlete's complaint

with respect to her provisional suspension falls outside the jurisdiction of the Panel and the alleged procedural irregularities in the proceeding before the CBAt Sport High Court have been cured.

10. SANCTION

10.1 The Regulatory Sanction

192. Under the heading "Sanctions", IAAF Rule 60.2(a) sets out the following sanctions for doping offences:

> (i) first offence – for a minimum of two years from the date of the hearing at which it is decided that a Doping Offence has been committed. When an athlete has served a period of suspension prior to a declaration of ineligibility, such a period of suspension shall be deducted from the period of ineligibility imposed by the relevant Tribunal;
>
> (ii) second offence – for life.

193. It is not unusual for sporting federations to provide for the sanction of a life ban (for some examples see Richard MCLAREN, *Doping Sanctions: What Penalty?*, International Sports Law Review, 2002, p. 23, 27). For an athlete, this is the most severe and draconian of all sentences. In contrast to other similar provisions (see for instance Article 130 of the UCI Anti Doping Examination Regulations (AER), which provides for a sanction "up to and including suspension for life" for a second offence), IAAF Rule 60.2(a)(ii) provides for a so-called fixed sanction. As one author has recently observed, the main feature of this kind of sanction is that:

> [they] do not require any proof that the penalty being applied is just and equitable. The only requirement is that a doping infraction has occurred. Once this happens a fixed and specified sanction is automatically applied. (MCLAREN, *op. cit.*, p. 25).

194. As a matter of principle, the Panel considers that the CAS is bound to apply the sanctions provided for in the applicable doping control rules. Accordingly, in the event of a fixed sanction, CAS panels must automatically apply the sanction stipulated by the sporting federation. This principle is well established in the CAS jurisprudence (see CAS 96/157, *Federazione Italiana Nuoto v. FINA*, Award of 23 April 1997, CAS Digest I, p. 351, 358-359, para 22) which has been recently reaffirmed in the following terms:

> In the Panel's opinion, the AAA Panel [competent to adjudicate doping disputes in the United States] was wrong to reduce the mandatory period of suspension [...]
>
> (CAS 2002/A/360 *Jovanovic v. USADA*, Award of 7 February 2002, para. 59, p. 21, available at: *http://www.usantidoping.org/files/PressRelease_2_11_2002_128.pdf*).

195. In the present case, it is common ground that Ms. dos Santos was found guilty of a first doping offence in 1995. As a consequence, the Panel has no choice but to impose a life ban for this her second doping offence, in accordance with IAAF Rule 60.2(a).

10.2 CAS power to modify fixed sanctions

196. Although she repeatedly emphasized that a life ban is a very harsh penalty, Ms. dos Santos did not contest the applicability of IAAF Rule 60.2(a)(ii), as such, during the course of her submissions. Nevertheless, the Panel has a duty to issue an award that will be uphold in the event of an application to set aside in Switzerland or elsewhere. Accordingly, the Panel will consider whether the life ban sanction is reasonable and appropriate.

197. A CAS arbitral award can be set aside on the merits only if it is contrary to public policy within the meaning of Article 190(2)(e) PIL. The Swiss Federal Supreme Court has held that the notion of public policy "must be understood as a universal rather than national concept, intended to penalize incompatibility with fundamental legal or moral principles acknowledged in all the civilized states [...] (ATF 120 II 155)" (Tribunal fédéral 5P.83/1999, *Lu Na Wang et al. c. FINA*, Decision of 30 March 1999, Reported in CAS Digest II, p. 767, 779). In the view of the Panel, such a universal approach is particularly sound in sports cases, where an award has an inherent worldwide effect and where athletes from different nations (and from different sports) should benefit from the same fundamentals guarantees. The Panel will thus assess the appropriateness of the sanction mandated by IAAF Rule 60.2(a) based upon the test of proportionality which is generally recognized in both disciplinary law and sports law.

10.3 The Proportionality Test

198. In the light of all the circumstances of the case, the Panel finds that the suspension sought by the IAAF in this appeal is severe but not disproportionate. This finding is based on the following factors:

- Ms. dos Santos is not a first time offender. An AAA arbitration panel relied upon this factor to justify the imposition of a life ban even though the applicable rule (i.e., Article 130 UCI AER) provided the panel with some discretion in fixing the sanction (see AAA N° 30-190-00505-02, *USADA c Tammy Thomas*, Award of 6 September 2002, p. 19, available at http://www.usantidoping.org). Moreover, it has been observed that "once an athlete commits the same infraction twice, any penalty imposed by an IF will generally be deemed proportionate" (MCLAREN, *op. cit.*, p. 32).

- The T/E ratio found in the urine sample provided by Ms. dos Santos was exceedingly high (i.e., 37.82 for the "A" sample and 79.31 for the "B" sample). Even the level ultimately relied upon for declaring the test positive (i.e., 25) is very high. As a matter of comparison with other IAAF affiliated athletes, it suffices to mention that Mary Slaney Decker was found guilty of a first doping offence based upon a T/E ratio of 11.6 (*Slaney v. Int'l Amateur Ath. Fedn*, 244 F.3d 580 (7th Cir. Ind. Mar. 27, 2001)), and Ben Johnson was found guilty of a second offence, and thus suspended for life, based upon a T/E ratio of 10.3 (*Johnson v. Athletics Canada*, [1997] O.J. No. 3201, DRS 98-01748 Court File No. A4947/97). The T/E ratio of sample provided by Ms. dos Santos is, at the very least, more than twice as high as the T/E ratio found in these other athletes (both of whom were unsuccessful in challenging their suspensions before the state courts).

- In the case of Ben Johnson, the Ontario Court of Justice held that a life ban was proportionate (i.e., as a reasonable restraint of trade) because it was necessary "to protect [the athlete] for the sake of his own health from the effects of consistently using prohibited substances" and to discourage "young people [... from doing] the same", as well as "to protect the right of [every] athlete to fair competition" and "the integrity of the sport", which is also in the interest of the public. The Court considered that these various interests would not be effectively protected until "the rewards for a cheater even when caught are greater than for obeying the rules" and, accordingly, upheld the life ban imposed by the IAAF on Ben Johnson. All these considerations are equally relevant in the case of Ms. dos Santos.

- Based upon similar arguments, the CAS panel in *Reinholds v. FILA* placed great weight on the willingness of some international federations to "impose higher minimum sanctions as a demonstration of their determination and commitment to the eradication of doping in their sport" and concluded, "as a matter of principle, that a life ban can be considered both justifiable and proportionate in doping cases" (CAS 2001/A/330, *Reinholds v. FILA*, Award of 23 November 2001, paras. 46-47. p. 15). Considering that a life ban was imposed for a first offence in *Reinholds v. FILA*, the Panel finds that it clearly would not be disproportionate to impose the same sanction for a second doping offence.

199. Several CAS panels have observed that "[w]hatever the nature of the offence may be, [...] the special circumstances of each case must be taken into account when determining the level of the sanction" (CAS 2000/A/218, *Noriyuki Haga c. Fédération Internatiale de Motocyclisme*, Award of 22 December 22 2000 para, 79, reported in CAS Digest II p. 411, 417, par. 19). Given that IAAF Rule 60.2(a) sets outs a fixed sanction for a second doping offence, the Panel does not consider that it has jurisdiction to consider exceptional circumstances in fixing the sanction in this appeal. Within the framework of the IAAF Rules, exceptional circumstances are only relevant within the limited context of an athlete's request for reinstatement by the IAAF Council in accordance with the IAAF Rule 60.9[4]. The decision at issue in this appeal is not, however, a decision on reinstatement by the IAAF Council, but rather a decision on an eligibility decision by a IAAF member federation.

11. CONCLUSION

200. In summary, the Panel finds that: (i) a prohibited substance, testosterone, was present in the body of Ms. dos Santos, (ii) the presence of this prohibited substance, in and of itself, constitutes "doping" within the meaning of IAAF Rule 55.2, (iii) this is the

[4] IAAF Rule 60.9 states as follows: "In exceptional circumstances, an athlete may apply to the Council for re-instatement before the IAAF's period of ineligibility has expired. Where an athlete has provided substantial assistance to a Member in the course of an enquiry into doping carried out by that Member, this will normally be regarded by the Council as constituting exceptional circumstances. A decision on exceptional circumstances shall be made only if the athlete is able to present three negative tests conducted by the Member or the IAAF, with a period of at least one month between each test. However, it is emphasised that only truly exceptional circumstances will justify any reduction. Details of the procedure and the criteria for application are to be found in the "Procedural Guidelines for Doping Control".

Athlete's second doping offence, (iv) pursuant to IAAF Rule 60.2, the sanction of "ineligibility for life" automatically applies in the case of a second doping offence, and, therefore, (v) the CBAt Sports High Court "reached an erroneous conclusion" within the meaning of IAAF Rule 22.3 when it absolved Ms. dos Santos of a doping offence in its decision dated 11 March 2002.

201. For all of the above reasons, the Panel therefore concludes unanimously that this appeal must be granted and that the decision of the CBAt Sports High Court dated 11 March 2002 must be overturned and replaced by a declaration that Ms. dos Santos is guilty of a doping offence and thus ineligible for life.

12. COSTS

202. In accordance with Article R65.1 and Article R65.2 of the CAS Code, appeal arbitration proceedings are free, apart from the fee of CHF 500 paid by the Appellant upon submission of the Statement of Appeal which is retained by the CAS. Otherwise, the fees and costs of the arbitrators, together with the costs of the CAS are borne by the CAS.

203. Pursuant to Article R65.3 of the CAS Code, the Panel has jurisdiction to allocate the legal costs and expenses incurred by the parties in connection with the appeal arbitration proceeding:

> The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.

204. In this appeal, the IAAF has been successful in its endeavour to overturn the decision of the CBAt Sport High Court and demonstrating that Ms. dos Santos committed a doping offence. The IAAF has not, however, shown itself to be diligent at all times in the conduct of this proceeding.

205. The Panel is particularly troubled by the fact that the IAAF only chose to adduce the results of the IRMS analysis on the "B" sample at the very end of the hearing of 8 November 2002. One can assume that if this evidence had been submitted to the CBAt Sport High Court, the outcome of the proceeding before that body may have been different and the present appeal may not have been necessary. In any event, it can not be excluded that, had the IAAF submitted all the relevant evidence with due diligence, the Athlete would not have embarked on her expensive legal journey.

206. The Panel notes that, in circumstances very similar to the one at hand, an IAAF Arbitration Panel made the following ruling:

> Taking into account the IAAF Rule 23.7 and that the IAAF had not presented necessary evidence in the National Hearing in Australia nor then provided Athletics Australia or Mr. Capobianco with this evidence, we decide that the IAAF shall pay for the travel and accommodation expenses of the representatives of Athletics Australia and Mr. Capobianco with his representatives and witnesses for the hearing in Monaco.
>
> (See. IAAF Arbitration Panel, 17 March 1997, IAAF v. Athletics Australia, reported in Lauri TARASTI, *op. cit.*, p. 147, 150)

207. Considering all the circumstances of this appeal, and in particular the conduct of the Parties, the Panel concludes that the IAAF and the CBAt should bear their own legal costs and expenses incurred in connection with this appeal arbitration proceeding and that the IAAF should pay to a portion of the legal fees and expenses incurred by Ms. dos Santos. The Panel thus finds that the IAAF should pay to Ms. dos Santos the amount of CHF 5'000 (five thousand Swiss francs), together with interest at the rate of 5% per annum from the date of this award.

* * * * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport hereby unanimously rules:

1. The Appeal filed by the IAAF on 13 May 2002 is granted in part.

2. The decision issued by the CBAt's Sport High Court in Manaus City on 11 March 2002 shall be modified as follows:

 "*Ms. Fabiane dos Santos committed an offence of doping within the meaning of IAAF Rule 55.2(i) and is declared ineligible for life pursuant to IAAF Rule 60.2(a)(ii)*".

3. The Court Office fee of CH 500.- (five hundred Swiss francs) already paid by the IAAF shall be retained by the CAS.

4. IAAF and CBAt shall each bear their own costs. IAAF is ordered to pay an amount of CHF 5'000 (five thousand Swiss francs), together with interests at 5% from the date of the decision, to Ms Fabiane dos Santos as a contribution towards her legal fees and expenses.

Done in Lausanne, 27 January 2003

THE COURT OF ARBITRATION FOR SPORT

L. Yves **Fortier**, C.C., Q.C.
President of the Panel

Hon. Robert J. **Ellicott, Q.C.**
Arbitrator

Juan **Vives R. de Hinojosa**
Arbitrator

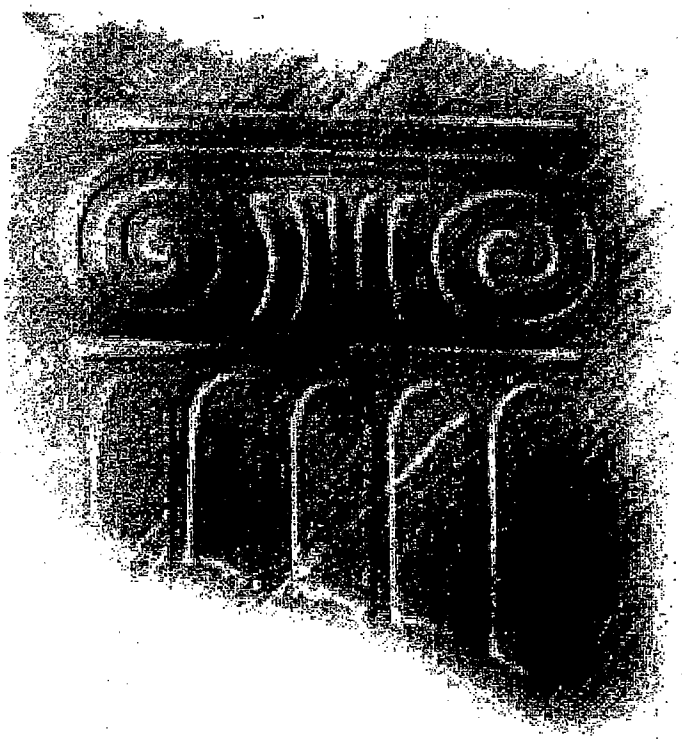
Antonio **Rigozzi**
Ad hoc Clerk

TAB 16

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Tribunal Arbitral du Sport

Court of Arbitration for Sport



ARBITRAL AWARD

WORLD ANTI-DOPING AGENCY, Montreal, Canada

v/

COETZEE WIUM, Groenvlei, South Africa

CAS 2005/A/908 Lausanne, 25 November 2005

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2005/A/908 WADA v/Wium

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Michael **Geistlinger**, Professor, Salzburg, Austria

Arbitrators: Mr Hans **Nater**, Attorney-at-Law, Zurich, Switzerland

Mr Conny **Jörneklint**, Enforcement Director, Kalmar, Sweden

in the arbitration between

WORLD ANTI-DOPING AGENCY (WADA), Montreal, Canada

Represented by Mr Olivier Niggli, Director of Legal Affairs, Montreal, Canada

-Appellant-

and

COETZEE WIUM, Groenvlei, South Africa

Represented by Mr Antoine Eigenmann, Attorney-at-Law, Lausanne, Switzerland

-Respondent-

1. The Parties to the Proceedings

1.1 The Appellant is the World Anti-Doping Organisation (WADA), which is a Swiss private law Foundation, seated in Lausanne, Switzerland and has its Headquarters in Montreal, Canada. Pursuant to art. 4.1 of its Statutes, as of 11 April 2005, WADA shall promote and coordinate at international level the fight against doping in sport in all its forms including through in and out-of-competition control. According to art. 4.4 of these Statutes, WADA shall "*encourage, support, coordinate and, when necessary, undertake in full cooperation with the public and private bodies concerned, in particular the IOC, IFs and NOCs, the organization of unannounced out-of-competition testing.*"

1.2 The Respondent is Mr Coetzee Wium, a South African paralympic powerlifter. He did not win any medals at the 2004 Paralympic Games.

2. The Facts and Submissions of the Parties

2.1 On 13 December 2004, the Respondent underwent a WADA out-of-competition doping control at his place of work, the Faure Wine Farm, Faure, Paarl, South Africa. The DCO of the South African Institute for Drug-Free Sport, who executed the control, explained by letter dated 28 February 2005 attached to the Doping Control Incident Report, that the control took place in a small office attached to the reception building of the farm. The Respondent was notified of the test at 9.39 on that day. The Respondent passed the urine in a toilet next to the office. As the Respondent was using crutches he asked the DCO to carry the sample collection vessel back to the office, which happened in view of the Respondent. The further procedure of sampling did not deviate from WADA International Standard, which was recorded and confirmed by the Respondent as well as by the DCO by signing the doping control form. The test was concluded at 9.54.

2.2 The DCO then cleaned up and packed his things and left. On the way on the N2, just after the R310, which leads to Faure, the DCO realized that he had forgotten the Respondent's samples in his bag in the premises of the Respondent. According the DCO's memory he had inadvertently left the samples on the desk in the office where the test had been conducted. The DCO stopped the car and called the Respondent immediately, according to the phone operator's bill at 10.19. The athlete, as can be seen from a letter sent by the General Manager of the Disability Sport South Africa (DISSA) who acted on behalf of the Respondent when appealing the first instance decision on 23 March 2005, held that the DCO had phoned him only an hour after the DCO having left the premises. Such statement of the athlete has not been maintained in the Respondent's answer in the current procedure before the CAS. The General Manager of DISSA in the letter mentioned above had also argued that, when the DCO and the Respondent had returned, they could not find the samples immediately as they had been removed by the cleaning lady and that the athlete had not been given a further chance to highlight this unhappy event on the doping control form in the section reserved for comments.

2.3 According to the DCO's statement, the DCO drove back to Faure Wine Farms and received the samples from the Respondent. He then drove back to Cape Town. In his view, the time that could have elapsed between the conclusion of the test and getting back to the Respondent was 45 minutes. Throughout this period the samples were sealed in a tamper proof "Berlinger Test Kit". The Respondent does not contest this.

2.4 By statement attached to the answer of the Respondent, Mrs Felicity Africa declared on 13 September 2005 that she was supposed to clean the above-mentioned office at Faure Wine Farm on the day in question and that she had seen the Respondent and another man who had a big blue bag with him when he left the office, before she started to clean it. Mrs Africa stated that, when cleaning, she moved everything back to its place. She saw a small white box on the table in front of the window and did not look into it. She put the box on the floor next to the table, as she had to wipe the table. Having finished she left the room. Mrs Africa added that she could not say if there was anyone else that went into the office after she had been there. According to the statement of the DCO he had not seen anybody else on the premises besides the Respondent and the receptionist of Faure Wine Farm. When he returned to the premises the Respondent met him outside the office where the test had been conducted, and was on his quad bike. The Respondent gave him the sample, which he had in his possession.

2.5 The date of the sample collection by DHL as indicated in the documentation package for the samples of the Respondent, which had been coded under number 865 637, was 14 December 2004, whereas the waybill showed 15 December 2004. The DCO explained this difference by stating that after he had completed the waybill he believed that the bag was to be collected by the couriers DHL on 14 December 2004. He had scheduled a pick-up via the Internet at 07.45 on 14 December 2004 and informed the courier that the package would be ready at 08.30 and that he would be at the collection point until 14.00. At 11.00 the DCO checked his emails, but there was no reference from DHL. After intervention by phone, a reference number (S96) was assigned to him. Nevertheless, no collection of the samples took place before 17.00. As no collection at all took place on this day, the DCO took the bag into the DHL depot on 15 December 2004 at 10.00, after having phoned DHL, who expressed surprise that the samples had not been collected on the day before. There the clerk who accepted the bag altered the date on the waybill to 15 December 2004, but the chain of custody still showed 14 December 2004. The General Manager of DISSA in her letter dated 23 March 2005 on behalf of the athlete drew the conclusion that the forgetting of the samples as well as the change of the date on the waybill effectively caused a break in the chain of custody, which should render the decision of the International Paralympic Committee's (IPC's) Management Committee of 14 March 2005 invalid. This Committee was presented with an Adverse Analytical Finding of the urine provided by the Respondent for testosterone or testosterone prohormones by the South African Doping Control Laboratory on 5 January 2005 and confirmed by IRMS analysis of the Doping Control Laboratory of the Deutsche Sporthochschule Cologne/Germany on 27 January 2005 and reported to WADA and IPC on 3 February 2005. The T/E ratio was 43.2 for screen and, therefore, well above the WADA threshold of 4.

2.6 Whereas the Respondent did not raise any objections with regard to the conditions of transport of the samples to the laboratories in the procedures before the IPC bodies, he argues in his answer before the CAS that the samples were collected on 13

December 2004 and arrived at the South African laboratory on 17 December 2004 without being frozen. The Respondent holds that a sample "*kept for 4 days at the high ambient temperature could be the origin of such an important T/E ratio and therefore impair the accuracy of the test result.*" In the Respondent's opinion such delay could alter the urine contained in the sample left at high ambient temperature. Such opinion stands against the statement of the WADA Science Director Dr. Olivier Rabin who by statement dated 29 June 2005 declares that he can affirm "*that under normal conditions the fact that an urine sample was kept 24 hours at the ambient temperature cannot be the origin of such an important T/E ratio.*"

2.7 The Respondent explains in part F of his answer that because urine samples are not collected under sterile conditions, bacteria have the chance to grow. They even have the chance to grow when samples are stored at ambient temperature. Based on scientific articles, the Respondent holds that in order to minimize bacterial contamination, urine samples should be stored at -20° C. As a result of bacterial activity, free form steroids are released, a result which has led to findings of an increased T/E determined in a combined fraction of conjugated and non-conjugated steroids. Furthermore, in the opinion of the Respondent an increased T/E ratio due to bad sample storing can not be excluded. Also "*erratic, not interpretable T/E ratios*" can be the consequence.

2.8 The Respondent added the further argument that a deviation from WADA International Standard for Laboratories, in particular from WADA Identification Criteria for Qualitative Assays (WADA Technical Document – TD2003IDCR) and from WADA Reporting and Evaluation Guidance for Testosterone, Epitestosterone, T/E Ratio and other Endogenous Steroids (WADA Technical Document – TD2004EAAS) took place with regard to the concentration of free testosterone and/or epitestosterone in the specimen. The Respondent holds:

"*No information on the measure of the free fractions of steroids in the urine sample appears in Chapter 3.1, prior to the addition of beta-glucuronidase enzyme and the glucuroconjugates hydrolysation ...*".

2.9 The Respondent emphasizes in this context that "the interpretation of the T/E ratio is impossible in this case and is not representative, nor consistent with any exogenous intake of any of illicit substances."

2.10 The Appellant reacted to both arguments by Supplementary Brief and attached as an exhibit, a supplementary statement of Dr. Olivier Rabin, dated 27 September 2005. WADA held that the sample was transferred from the South African laboratory to the Cologne laboratory to be analysed for the presence of exogenous anabolic steroids by IRMS. Bacterial activity, if occurred as argued by the Respondent, would not change the exogenous or endogenous origin of the substance in the sample. The results of IRMS show the exogenous origin of the substance as required by the WADA Technical Document TD2004EAAS. As a consequence, whether bacterial activity occurred or not is considered by WADA and Dr. Rabin as irrelevant. Scientifically there is no possibility that bacterial contamination could transform the origin of a substance from endogenous to exogenous.

2.11 Finally the Respondent raises concerns with regard to the screening of the test results. The T/E ratio should not have been calculated manually, which results in

unexplained difference in between two different T/E ratios in the complete doping control file. The Respondent regards this as a further deviation with regard to the WADA Identification Criteria for Qualitative Assays.

2.12 The Appellant holds against that under WADA Technical Document TD2004EAAS, results will be reported as consistent with the administration of the exogenous steroid

"when the values measured for the metabolite(s) in the athlete's sample differs by 3 delta units or more from the urinary reference steroid."

2.13 In the present case the difference was more than 7 delta units. In addition WADA referred to the 2004 WADA Prohibited List, which was in legal effect at the date of the doping control. On page 3 of this list it reads as follows:

"In all cases, and at any concentration, the laboratory will report an adverse finding, if, based on any reliable analytical method, it can show that the Prohibited Substance is of exogenous origin."

2.14 As IRMS is such a recognized method, and given that the exogenous origin is established, the T/E ratio value found in the Respondent's sample is of no relevance for WADA and

"whatever this level is, the Respondent is deemed to have committed a doping violation."

2.15 By Supplementary Brief, dated 17 October 2005, the Respondent upholds its concerns without offering new arguments and summarizes them as follows:

"Given the departures from standards in the transportation, the collection and the testing of the samples, one has to admit that this case has been conducted far away f(ro)m standards."

2.16 On 14 March 2005 following an expedited hearing, which took place on 7 March 2005, and on the recommendation of the IPC Anti-Doping Committee, the IPC Management Committee decided to impose a two (2) years ineligibility period on the Respondent, based on art. 12.2 IPC Anti-Doping Code. In addition and based on art. 12.7 IPC Anti-Doping Code, all competitive results obtained by the Respondent from 13 December 2004 were disqualified including forfeiture of any medals, points and prizes. The IPC Management Committee considered the facts and held that there was a minor departure from the WADA International Standard for Testing. But there was no evidence that the sample had been tampered with in any way and the seal on the sample was wholly intact. Therefore, the Committee found that this departure did not invalidate the result.

2.17 On 16 and 23 March 2005 the General Manager of DISSA filed two Notices of Appeal on behalf of the Respondent under art. 9.9 IPC Anti-Doping Code. Following the internal appeal hearing and the recommendation of the IPC Legal Committee according to art 9.17 IPC Anti-Doping Code, the IPC Management Committee decided on 2 May 2005 as follows:

"The sanction imposed on 14 March 2005 was not in accordance with the IPC Anti-Doping Code as a significant departure from the International Standard had occurred. In addition, the IPC Anti-Doping Subcommittee did not establish that this departure did not cause the adverse analytical finding.

Therefore, the Appeal is upheld and the Athlete reinstated to sport immediately."

2.18 The IPC Management Committee's decision dated 15 May 2005 focussed on the fact that the samples were left unattended for 45 minutes, during which time they had been moved around by a cleaning lady. The Committee found:

"The chain of custody was clearly broken and there is no clear record of exactly what happened to the Samples during this period. Accordingly, the IPC Legal Committee felt that it could not establish, on the balance of probabilities, that these events had not caused the Adverse Analytical Finding.

In light of this finding, the IPC Legal Committee did not consider the second question of whether the sanction applied by the IPC Anti-Doping Committee was the correct one."

2.19 With regard to the latter issue the Respondent and the General Manager of DISSA had argued that art 12.5.2 of the Code -"*no significant fault or negligence*"- should have been taken into consideration for defining the sanction to be imposed if it was found that no significant deviation from the International Standard occurred. As a consequence a reduction of the sanction of 2 years had been requested.

2.20 In its Statement of Appeal to the CAS, dated 21 June 2005, WADA asked

"to amend the decision rendered on May 2, 2005 by the IPC Management Committee in order to impose a 2-year ineligibility period on Mr Coetzee Wium."

2.21 In its Appeal Brief, dated 30 June 2005, WADA asked the CAS to:

"1. Uphold the appeal lodged by WADA;
2. Pronounce a 2-year suspension against Coetzee Wium;
3. Grant to WADA a portion of its costs."

2.22 In his answer, dated 16 September 2005 and in his Supplementary Brief, dated 17 October 2005, the Respondent asked the CAS Panel to:

"1. Reject the appeal lodged by WADA;
2. Confirm the IPC decision of 2.05.2005;
3. Grant to Coetzee Wium its costs."

3. The Proceedings

3.1 By letter dated 27 September 2005 the Respondent agreed to not hold a hearing and consented to the rendering of a decision based solely upon the written submissions. WADA did the same by letter dated 27 September 2005, but sought the Panel's

in his answer had raised an argument regarding the validity of the result of the test that was not raised previously, neither in first instance, nor in the appeal procedure before the IPC. Provided that WADA's Supplementary Brief was accepted, and that no new arguments were raised by the Respondent, WADA was willing to accept the Panel's decision without hearing, but offered to have their expert Dr. Olivier Rabin heard by the Panel. The Panel felt satisfied by the arguments provided in writing and decided not to hold a hearing, but to allow WADA to file a Supplementary Brief, which was submitted on 27 September 2005. The Respondent was given a deadline of 17 October 2005 to file a response to the Supplementary Brief, which he met.

3.2 On 12 October 2005 WADA requested that the Panel consider evidence of an unrelated infraction by the Respondent as evidence of his credibility. By letter dated 13 October 2005 the Respondent strongly objected to the inclusion of the evidence as the two cases were completely separate and distinct. The Panel decided based on art. R56 not to admit the Appellant's additional evidence.

3.3 Art. R56 reads as follows:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the grounds for the appeal and of the answer."

3.4 Given the Panel's decision that the parties be allowed a further exchange of arguments in writing in replacement of a hearing, and taking into consideration that there was no agreement between the parties to admit further evidence, no exceptional circumstances existed which would authorise the Appellant to submit this further evidence.

3.5 The Order of Procedure, dated 2 November 2005, was signed by both parties.

4. The Jurisdiction of the CAS

4.1 The Appellant filed its appeal pursuant to art 14.4 IPC Anti-Doping Code, which must be read in connection with art. 14.2, and in particular 14.2.1 as well as with art. 14.2.3 d) IPC Anti-Doping Code.

Art. 14.2 and art. 14.2.1 read as follows:

"*14.2 External Appeals from Decisions Regarding Anti-Doping Rules Violations, Consequences, and Provisional Suspensions*

A decision that an anti-doping rule violation was committed, a decision imposing Consequences for an anti-doping rule violation, a decision that no anti-doping rule violation was committed, a decision that the IPC (or applicable ADO) lacks jurisdiction to rule on an alleged anti-doping rule violation or its Consequences, may be appealed exclusively as provided in this Article 14.2.

14.2.1 In cases arising from Competition in an International Competition or in cases involving International Level Athletes, the decision may be appealed exclusively to the Court of Arbitration for Sport (CAS) in accordance with the provisions applicable before such court."

Art. 14.2.3 d) IPC Anti-Doping Code gives WADA the right to appeal to CAS under art. 14.2.1.

Art. 14.4 IPC Anti-Doping Code reads as follows:

"*Time for Filing Appeals*

The time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings having lead to the decision subject to appeal:

14.4.1 Within ten (10) days from notice of the decision, such party/ies shall have the right to request from the body having issued the decision a copy of the file on which such body relied;

14.4.2 If such a request is made within the ten (10) day period, then the party making such request shall have twenty-one (21) days from receipt of the file to file an appeal to CAS."

4.2 The decision that has been appealed by WADA, was received by WADA on 2 May 2005. On 9 May 2005 WADA requested the full case file from IPC. On 1 June 2005 WADA was provided by IPC with the full case file. The Statement of Appeal was filed to CAS on 21 June 2005. This was within the deadline of art. 14.4.2 IPC Anti-Doping Code. Furthermore, the Respondent did not object to the jurisdiction of the CAS.

5. The Applicable Law

5.1 Pursuant to art. R58, the Panel shall decide the dispute according to the applicable regulations. The applicable regulation is art. 14.2.1 IPC Anti-Doping Code which refers to "*the provisions applicable before such court*". Thus art. R58 of the Code applies, which reads as follows:

"*The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give the reasons for its decision.*"

6. The Merits

6.1 The Respondent summarizes his arguments by stating in his Supplementary Brief that departures from standards occurred with regard to transportation, collection and testing. In summary, the case was conducted far away from standards. The Applicant admits that a departure from standards did occur, but holds that this was of minor significance and that, by no means, did this departure have any impact on the result of the IPC establishing an Adverse Analytical Finding for testosterone in the Respondent's sample.

6.2 The Panel adheres to the test standard consistently applied by CAS Panels in comparable cases. This standard has been defined as follows: "*Ingredients must be established to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made.*" (See e.g. CAS Award 98/211, n° 26 with further references; CAS 2000/A/310, L. v/FILA, p. 27; CAS 2001/A/337, Bray v. FINA, p. 21). Art. 7.4 IPC Anti-Doping Code requires that testing conducted by the IPC or an applicable ADO shall be in substantial conformity with the WADC International Standard for Testing in force at the time of Testing.

6.3 Art. A.3.1 a) WADC International Standard for Testing, version 3.0, June 2003, declares an ADO responsible for ensuring that any "*matters with the potential to compromise an Athlete's test are assessed to determine if a possible failure to comply has occurred*".

6.4 This obligation must be seen in the context of art. 4.1 and 4.2 IPC Anti-Doping Code which correspond to art. 3.1 and 3.2 WADC. These provisions read as follows:

"*Art. 4.1 Burden and Standards of Proof*

The IPC (or applicable ADO) shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IPC (or applicable ADO) has established an anti-doping rule violation to the comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation, which is made. The standard of proof in all cases is greater than a mere balance of probability, but less than proof beyond a reasonable doubt. Where these rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

Art. 4.2 Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases.

4.2.1 WADA-accredited laboratories are presumed to have conducted Sample Analysis and custodial procedures in accordance with the WADC International Standard for Laboratories. The Athlete may rebut this presumption by establishing that a departure from the International Standard, undermining the validity of the Adverse Analytical Finding, occurred.

If the Athlete rebuts the preceding presumption by showing that a departure from the International Standard occurred, then the IPC (or applicable ADO) shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

4.2.2 Departures from the WADC International Standard for Testing which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such Results. If the Athlete establishes that departures from the WADC International Standard occurred during Testing then the IPC (or applicable ADO) shall have the burden to establish that such departures did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation."

A) Alleged Departures from WADC International Standard for Testing

6.5 The Respondent's arguments with regard to departures from testing standard refer to the fact that the samples were left unattended at his premises for about 45 minutes and that they had been transported to the laboratory after a delay of one day and in an unfrozen condition. Regarding the breach of the chain of custody by having forgotten the samples in a room close to the reception area in the Faure Wine Farm, the DCO and the Respondent, taken together, mention two persons besides themselves who have been present in this area: a lady at the reception and the cleaning lady. The latter touched the bag with the samples. Both sides further agree in their description of the facts that the samples had been sealed in a tamper proof "Berlinger Test Kit", before they were forgotten. The seal had remained intact until its opening at the laboratory. The Respondent submitted a witness statement from the cleaning lady stating that she did nothing else with the bag other than displace it during the cleaning of the room. According to her statement she neither opened the bag, nor did she break the seal. Thus, only the receptionist or the athlete himself could have exchanged or manipulated the bag during the period in question, because even the Respondent did not make any particular submission with regard to the possibility of the appearance of an unknown third person with an interest to take the bag, open it and exchange or manipulate the samples, and then return it.

6.6 The Panel sees no reason to deviate from established practice of CAS in comparable cases. It therefore has to answer the following question, in a case where the Respondent is able to establish any departure from the WADC International Standard for Testing: "*Do these deviations cast sufficient doubt on the reliability of the test results to an extent that the finding ...* " of a Prohibited Substance "*in the Appellant's urine was not sufficient to establish to the comfortable satisfaction of the Panel a doping offence*" by the Respondent (See e.g. CAS 2001/A/337, Bray v/FINA, p. 22). In the case CAS 2004/A/607, Galabin Boevski v/IWF, another CAS Panel dealt extensively with the reliability of the Berlinger kits and were convinced having heard experts that a Berlinger bottle cannot be opened without leaving a trace of it having been tampered (see p. 22, n° 7.8.8). The same Panel, referring to earlier CAS awards, found that a legal regime with regard to the required standard of proof which is set out in art. 3.1 WADC, is in line with Swiss law and the jurisprudence of the Swiss Supreme Court (p. 24, n° 7.9.4). The standard of proof required by CAS in all such cases is greater than mere balance of probability but less than proof beyond a reasonable doubt (e.g. CAS 2000/A/270, David Meca-Medina and Igor Majcen v/FINA, p. 11 f, n° 4.2).

6.7 Arts 4.1 and 4.2 IPC Anti-Doping Code correspond exactly to arts. 3.1 and 3.2 WADC. The standard of proof to be applied is therefore the same for both codes. The Panel, when evaluating the arguments and evidence produced by the parties cannot imagine any hypothesis under the given circumstances that would indicate that any other person, whether identified or not, might have used the period during which the samples were unattended, for any act of sabotage with a possible impact on the result of the laboratory analysis. The Panel finds that WADA established to the Panel's comfortable satisfaction, that the deviation from the testing standard by having the samples left unattended for 45 minutes did not cast any doubt on the reliability of the test results. The practical impossibility to destroy a Berlinger bottle and the fact that the seal was intact at the samples' arrival at the laboratory also excludes any probability that a negligent mishandling of the samples by the cleaning lady might have occurred involving any impact on the Adverse Analytical Finding.

6.8 The Panel, applying the same principles, arrives at the same conclusion with regard to the Respondent's argument concerning the prolonged stay of the samples with the DCO due to a delayed pick-up by DHL and the resultant non-correspondence of the date in the documentation package and on the waybill. Irrespective of whether there was or was not a departure from the International Standard in this regard, the Panel finds the explanation given by the DCO to be fully satisfactory. Given the finding of another CAS Panel in the CAS case 2001/A/337, Bray v/FINA, p. 24, that even a delay of two weeks could not influence an Adverse Analytical Finding, this Panel can exclude any probability that the delay of one day could cast any doubt on the reliability of the test results under the given circumstances.

6.9 The last argument of the Respondent with regard to a departure from the WADC International Standard for Testing, i.e. the storage and transport for 4 days in unfrozen condition at the ambient temperature, could be discussed in connection with arts. 8.3.1 and 9.3.1 of this Standard which advises the IPC to ensure that any sealed sample will be stored and transported in a manner that protects its integrity, identity and security. But, since the Respondent draws significant conclusions from this argument with regard to the analysis of his sample, the argument will be discussed below.

B) Alleged Departures from WADA Technical Documents for Laboratory Analysis

6.10 According to the Respondent, the storage, particularly if prolonged, and the transport at ambient temperature of the Respondent's urine has led to bacterial activities in the urine with the consequence of significant changes in measured steroid profiles. The Respondent argues that the possibility cannot be excluded that from this ensued an increased or an erratic, uninterpretable T/E ratio. The Respondent holds that the doping control laboratory departed from WADA Technical Document TD2003IDCR by not giving any information on the measure of the free fractions of steroids in the urine, prior to the addition of beta-glucuronidase enzyme and the glucuroconjugates hydrolysation. In addition, the indication of the endogenous steroid profile of the Respondent resulted in a T/E ratio well below the cut-off value of WADA, as defined by WADA Technical Document TD2004EAAS, p. 2. Furthermore, the T/E ratio should not have been calculated manually after further correction, because there was no shift in retention value.

6.11 Due to the fact that the parties agreed to replace the oral hearing with a second exchange of submissions and as the Respondent explicitly refers to the statements of Dr. Rabin, the Panel feels free to consider Dr. Rabin's statements as expert opinion duly submitted for the Panel's evaluation by the Applicant in order to establish that the alleged departure from the International Standards did not cause the Adverse Analytical Finding or the factual basis for an anti-doping rule violation. The Panel places specific emphasis on paragraphs 4 and 6 of the Supplementary statement of Dr. Rabin, dated 27 September 2005. Dr. Rabin holds that the question of whether there was bacterial activity and whether it could have had any influence on the T/E ratio – Dr. Rabin does not see any scientific support for such assumption – is irrelevant, as the Cologne laboratory, when analysing the sample through IRMS, clearly demonstrated the exogenous origin of the substance contained in the Respondent's sample. Dr. Rabin adds that scientifically, there is no possibility that bacterial contamination and activity could transform the endogenous to exogenous origin of a substance. The Respondent in his Supplementary Brief, dated 17 October 2005, did not raise any counter argument to such reasoning of Dr. Rabin.

6.12 The Panel, although prepared to assume in favour of the Respondent that there was a departure from the International Standards in this regard, nevertheless feels comfortably satisfied that the Applicant has established that such assumed departure did not raise any doubt regarding the reliability of the test results.

6.13 Given the exogenous origin of the Prohibited Substance found in the sample of the Respondent the Panel finds that the WADA 2004 Prohibited List must be applied, which states on page 3 regarding anabolic androgenic steroids, including testosterone:

"*In all cases, and at any concentration, the laboratory will report an adverse analytical finding, if, based on any reliable analytical method, it can show that the Prohibited Substance is of exogenous origin.*"

6.14 The Respondent did not raise any doubts regarding IMRS being such a reliable method. Therefore, the Panel does not find that the athlete could rebut the presumption that a WADA-accredited laboratory conducted Sample Analysis and custodial procedures in accordance with the WADC International Standard for Laboratories. No departure from the International Standard, which would undermine the validity of the Adverse Analytical Finding, was established, once the exogenous origin of the Prohibited Substance had become clear.

C) Sanctions

6.15 As a result of the forgoing deliberations the Panel finds an Adverse Analytical Finding for testosterone or testosterone prohormones in the Respondent's samples established. Testosterone is a prohibited anabolic steroid included on the WADA 2004 Prohibited List. The Respondent therefore committed an anti-doping rule violation. The IPC Anti-Doping Code provides for such behaviour in arts. 12.2, 12.5, 12.7, 12.8 and 12.10 as follows:

"*Art. 12.2 Imposition of Ineligibility for Prohibited Substances and Prohibited Methods*

Except for the specified substances identified in Article 12.3, the period of ineligibility imposed for a violation of Article 3.1 (presence of Prohibited Substance or its Metabolites or Markers) shall be:

First violation: Two (2) years ineligibility

...

However, the Athlete or other Person shall have the opportunity in each case, before a period of Ineligibility is imposed, to establish the basis for eliminating or reducing this sanction as provided in Article 12.5.

Art. 12.5 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances

12.5.1 No Fault or Negligence. If the Athlete establishes in an individual case involving an anti-doping rule violation under Article 3.1 (presence of Prohibited Substance or its Metabolites or Markers) ... that he or she bears No Fault or Negligence for the violation, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Specimen in violation of Article 3.1 (presence of Prohibited Substance), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated. ...

12.5.2 No Significant Fault or Negligence. This Article 12.5.2 applies to anti-doping rule violations involving Article 3.1 (presence of Prohibited Substance or its Metabolites or Markers), ... If an Athlete establishes in an individual case involving such violations that he or she bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the minimum period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this section may be no less than 8 years. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Specimen in violation of Article 3.1 (presence of Prohibited Substance), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.

12.5.3 The IPC Management Committee, on recommendations from the IPC Anti-Doping Subcommittee, may also reduce the period of Ineligibility in an individual case where the Athlete has provided substantial assistance to the IPC, which results in the IPC discovering or establishing an anti-doping rule violation by another Person involving Possession under Article 3.6.2 (Possession by Athlete Support Personnel), Article 3.7 (Trafficking), or Article 3.8 (administration to an Athlete). ...

Art. 12.7 Disqualification of Results in Events Subsequent to Sample Collection

In addition to the automatic Disqualification of the results in the Event which produced the positive Sample under Article 11 (Automatic Disqualification of Individual Results), all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other doping violation occurred, through the commencement of any Provisional Suspension

or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.

Art. 12.8 Commencement of Ineligibility Period

The period of Ineligibility shall start on the date on which the final decision for such period is imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served. Where required by fairness, such as delays in the hearing process or other aspects of Doping Control not attributable to the Athlete, the IPC may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection.

Art. 12.10 The applicable NPC is responsible for enforcing any sanction imposed by the IPC."

6.16 The Panel feels bound by art. 12.2 IPC Anti-Doping Code to impose a two (2) years ineligibility period on the Respondent. In addition and based on art. 12.7 IPC Anti-Doping Code, all competitive results obtained by the Respondent from 13 December 2004 are disqualified including forfeiture of any medals, points and prizes. The Respondent did not offer any arguments for the Panel to make use of art. 12.5 IPC Anti-Doping Code.

6.17 The Panel finds that the period of ineligibility shall start on the date of this decision, as provided for by art. 12.8 IPC Anti-Doping Code. The period of suspension from 13 December 2004 – 2 May 2005 shall be credited against the total period of ineligibility to be served. The Panel does not see fit to invoke its authority under art. 12.8 IPC Anti-Doping Code, to start the period of ineligibility at an earlier date.

7. Costs

7.1 According to art. R65 of the Code, as this is a dispute of an international nature ruled in appeal, these proceedings shall be free, except for the minimum CAS Court Office fee of CHF 500, which was paid by the Appellant and is retained by the CAS.

7.2 Pursuant to art. R65.3, the costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties. The Panel has considered these factors, including the legal aid granted to the Respondent by Order of the ICAS President, when considering the parties' applications for costs. The Panel rules that both parties shall bear their own costs.

ON THESE GROUNDS

The Court of Arbitration for Sport hereby rules:

1. The appeal filed by WADA on 21 June 2005 is upheld.
2. The decision of the IPC Management Committee of 2 May 2005 is annulled.
3. Mr Wium is sanctioned under art. 12.2 IPC Anti-Doping Code by a two (2) years ineligibility period, which starts on the date of this decision. The period of suspension from 13 December 2004 – 2 May 2005 shall be credited against the total period of ineligibility to be served.
4. Mr Wium is sanctioned under art. 12.7 IPC Anti-Doping Code by the disqualification of all competitive results obtained by Mr Wium from 13 December 2004. This includes forfeiture of any medals, points and prizes.
5. The award is rendered without costs except for the Court Office fee of CHF 500.- (five hundred Swiss Francs), which is retained by the CAS.
6. Each side shall bear its own costs.

Done in Lausanne, 25 November 2005

THE COURT OF ARBITRATION FOR SPORT

Michael **Geistlinger**
President of the Panel

Hans **Nater**
Arbitrator

Conny **Jörneklint**
Arbitrator

TAB 17



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2002/A/362 IAAF v/CAS & Zubek

ARBITRAL AWARD

delivered by

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Mr. David Rivkin, attorney at law, New York, USA
Arbitrators: Prof. Christoph Vedder, Munich, Germany
Dr. Gerhardt Bubnik, attorney at law, Prague, Czech Republic

in the arbitration between

International Association of Athletics Federations (IAAF), Monaco
Represented by Mr. Mark Gay, attorney at law in London, Great Britain

and

the Czech Athletic Federation, Prague, Czech Republic
represented by its General Secretary Mr. Frantisek Fojt

and

Mr. Roman Zubek, Czech Republic

* * * * *

1. On 13 May 2000, respondent Roman Zubek ("Zubek"), a sprinter, submitted to drug testing at the Prague Championships in the Czech Republic. On 11-15 and 27-28 July, the Prague laboratory acting for the respondent Czech Athletic Federation ("CAF") found that Zubek's "A" sample contained dehydroepiandrosterone ("DHEA") at a concentration of 898 ng/ml (later corrected to 1098 ng/ml) and an elevated testosterone/epitesterone ("T/E") ratio of 5.2:1 (later corrected to 5.23:1). (Witness Statement of Dr. Ruzena Slechtova). On 12 September 2000, analysis of the "B" sample confirmed this result with an uncorrected DHEA concentration of 898 ng/ml and an uncorrected T/E ratio of 5:1. (Id.) These results differed markedly from those of Zubek's earlier tests: DHEA concentrations of 67 ng/ml (2 February 1997) and 29 ng/ml (30 January 1999) and T/E ratios of 1.02:1 (2 February 1997) and 1.12:1 (30 January 1999). (Id.) These results also differed from Zubek's negative tests conducted independently and subsequently: DHEA concentrations of 69 ng/ml (11 December 2000) and 35 ng/ml (11 May 2000). (Id.)

2. On 30 August 2000, the CAF, the member federation in the Czech Republic of appellant International Association of Athletics Federations ("IAAF"), notified Zubek that he was to be provisionally suspended beginning on 3 September 2000. (Letter from Frantisek Fojt to Roman Zubek).

3. On 27 September 2000, the CAF sent notice to the IAAF of the positive result.

4. The CAF Disciplinary Commission then met, with Zubek present in both instances, on 4 and 25 October 2000 to discuss the case further. (Records of CAF Disciplinary Commission Meetings). At the second meeting, Zubek requested additional testing of his sample in order to distinguish between endogenous production and exogenous administration of DHEA. (Record of 25 October 2000 CAF Disciplinary Commission Meeting). On 31 October 2000, however, Zubek and his coach sent a letter to the President of the Commission requesting that there be no further testing on the grounds that the sample was "relatively too old." (Letter from Roman Zubek and Ludvik Svoboda to Miroslave Sevcik). Apparently unaware of Zubek's reversal, the Prague laboratory sent the residual "A" sample to the Cologne Laboratory for isotope radio mass spectrometry ("IRMS") analysis on 13 November 2000. (Witness Statement of Dr. Ruzena Slechtova). Zubek did not have a representative present to observe the

sealing of the sample. However, there do not appear to be any rules requiring an athlete's presence in these circumstances.

5. The CAF Disciplinary Commission met again on 20 November 2000 with Zubek present. After discussing its concerns with the positive finding, the Commission decided to cease Zubek's temporary suspension and not to punish him further. The Commission explained:

> The Disciplinary Commission will not punish Roman Zubek for the positive test result of the DHEA urine sample for the reason that they have the opinion [that] the found substance is [the body's] own substance. There is no limit for this substance in the body that should be understood as doping given by any competent authority (COC, IOC, and AC CR). As a matter of principle, the Disciplinary Commission of the Czech Athletic Federation cannot fairly evaluate the quantity of the substance in the body, if it was delivered artificially or if it was a body-own quantity. (Record of 20 November 2000 CAF Disciplinary Commission Meeting)

6. The CAF reported this decision to Zubek in a 21 November 2000 letter stating "the Disciplinary Committee of the Czech Athletic Federation considers therefore the disciplinary proceedings with you as being settled." (Letter from Miroslav Sevcik to Roman Zubek).

7. The CAF reported this decision to the IAAF on 12 December 2000.

8. Four days prior to the CAF's letter to the IAAF, however, the Director of the Cologne laboratory had informed the head of the Prague laboratory that the IRMS test confirmed use of DHEA. (Fax from Dr. Wilhelm Schanzer to Dr. Ruzena Slechtova). The Prague laboratory communicated these results to the IAAF on 12 December 2000. (Letter from Dr. Ruzena Slechtova to Dr. Gabriel Dolle). Thus, on 20 December 2000, the same day it received notice of the CAF decision, the IAAF suggested to the CAF that it review Zubek's case again in light of the these results. After additional correspondence did not produce a follow-up hearing, on 13 February 2001 the IAAF formally asked the CAF to consider the IRMS results. On 27 February 2001, the CAF general secretary informed the IAAF that " the National Board of CAF had confirmed the decision of the Disciplinary Committee of 20th November 2000 not to open the disciplinary procedure against Roman Zubek." (27 February 2001 Fax from Frantisek Fojt to Dr. Gabriel Dolle).

9. In April 2001, the IAAF once again asked the CAF to reconsider its decision and to inform IAAF on the final decision accordingly as soon as possible. It sent to the CAF the IAAF Anti-Doping Commission science adviser's analysis of Zubek's case, as well as some related scientific literature. (20 April 2001 Fax from Dr. Gabriel Dolle to Frantisek Fojt). In response, the CAF General Secretary wrote the IAAF Anti-Doping Officer that he "suppose(d)" that after additional meetings on 14 and 15 May 2001, he would "be able to inform you about a final decision." Mr. Fojt of the CAF, in a 17 May 2001 fax reporting the findings of the Disciplinary Commission from the 14 May 2001 meeting, informed the IAAF of two reasons why the Disciplinary Commission refused to "change its decision": (1) it "did not receive the reference to the concrete rule stating exactly the volume of DHEA no longer allowed in the body;" and (2) it believed that "the proof obtained by the isotope analysis in the Cologne laboratory has not been earned by the standard way. The rest of the urine specimen A not sealed in the presence of Mr. Roman Zubek has been mailed to Cologne." (17 May 2001 Fax from Frantisek Fojt to Dr. Gabriel Dolle).

10. The IAAF responded to this decision by requesting in May 2001 from the head of the Prague laboratory documentation showing adherence to IAAF chain of custody standards. (6 June 2001 Fax from Dr. Gabriel Dolle to Dr. Ruzena Slechtova). When it finally received that documentation on 18 September 2001, the IAAF sent it the next day to the CAF and once again asked the CAF to change its decision and to "conclude this evident DHEA positive case in conformity with the IAAF Rules." (19 September 2001 Fax from Dr. Gabriel Dolle to Frantisek Fojt). After a follow-up fax by the IAAF on 12 November 2001, the CAF informed the IAAF on 13 November 2001 that the case, including all the documentation, "has been handed over ... to [its] disciplinary commission for further negotiation," which was expected to conclude by 30 November 2001. (Fax from Frantisek Fojt to Dr. Gabriel Dolle). A 16 November 2001 fax repeated this assurance, stating that the commission will "conclude this case" by 30 November 2001.

11. The CAF again maintained its refusal to sanction Zubek. On 3 December 2001, the CAF sent the IAAF the minutes of the meeting of the Disciplinary Commission held on 26 November 2001. The minutes show that the Commission referred to its decision of November 20. 2000 and to the decision of May 14, 2001 and stated that according to

CAF's Disciplinary Regulations, it could not bring proceedings against Zubek, regardless of any new circumstances, more than one year after the alleged offense. It also noted that "the sample B has been mailed to the isotope control after more than 3 months after the realization of the taking off." (3 December 2001 Fax from Frantisek Fojt to Dr. Gabriel Dolle).

12. The IAAF responded to these objections in a subsequent letter, stating among other things that CAF was to apply IAAF regulations, not its own. The IAAF asked CAF to "now confirm that IAAF can treat the Disciplinary Commission's decision as final." The CAF responded by confirming in a 14 December 2001 letter that the decision of the Disciplinary Commission was final: "I am sorry, but it's my duty [to] hereby confirm, that the Disciplinary Commis[s]ion's decision in the case of Roman Zubek is final." (Fax from Frantisek Fojt to Dr. Gabriel Dolle).

13. The IAAF filed this appeal, pursuant to IAAF Rule 21.3(ii), with CAS on 31 January 2002. The IAAF seeks a ruling that the CAF improperly failed to commence disciplinary proceedings against Zubek and that Zubek committed a doping offense meriting a two-year suspension.

14. CAS appointed three arbitrators to hear the appeal: Prof. Christoph Vedder of Augsburg, Germany, nominated by the IAAF; Gerhardt Bubnik of Prague, Czech Republic, nominated by the CAF; and as President, David W. Rivkin of New York, NY, United States.

15. The Tribunal received various submissions from the parties, including documents, witness statements, expert reports and briefs, and issued several procedural orders. The Tribunal held a hearing in Lausanne on 15 May 2002 and, as described below, issued an additional procedural order and received several post-hearing submissions from the parties.

DECISION

16. The Arbitral Tribunal must first decide if, on the facts of this case, the appeal was filed in a timely manner so that we have jurisdiction over the appeal and the parties before it. If the appeal is timely, then the Tribunal must decide whether Zubek committed a doping offence under the IAAF Rules.

Jurisdiction

Timeliness of the IAAF Appeal

17. IAAF Rule 21.2, effective 1 November 2001, provides that all appeals to the Court of Arbitration for Sport be made "within sixty days of the date of communication to the prospective appellant of the decision that is to be referred." The Transitional Provisions of these rules state that disputes relating to any doping matter before 1 November 2001 shall be resolved in accordance with the prior IAAF Rules, unless the parties agree to submit their dispute to CAS.

18. Thus, CAS has jurisdiction over appeals in IAAF matters only where the challenged decision was taken later than 31 October 2001, unless the parties consent to CAS jurisdiction on an ad hoc basis, as provided in Note 3 of the Transitional Provisions. While the IAAF and CAF consented to the CAS's jurisdiction, Zubak neither consented nor objected to jurisdiction. Silence cannot be deemed to be consent for purposes of the Transitional Provisions. As a result, this Tribunal has jurisdiction only if the CAF decision from which the IAAF appeals was made later than 31 October 2001, so that we must decide whether the CAF's 26 November 2001 decision was a final decision from which the IAAF could appeal.

19. The CAF now contends that its Disciplinary Commission made its final decision on 20 November 2000 (reported to the IAAF on 12 December 2000). According to the CAF, the subsequent decisions of 27 February, 14 May, and 26 November 2001 merely re-stated the November 2000 decision in response to requests for reconsideration by the IAAF. Therefore, it argues that the IAAF's appeal brought on 31 January 2002 is untimely.

20. The IAAF contends that the CAF made a final decision on 26 November 2001 (reported to the IAAF on 3 December 2001). Therefore, it urges that its appeal is timely.

21. The Tribunal rules by a majority decision that the decision of 26 November 2001 was a final decision within the meaning of IAAF Rule 21.

22. Each of the earlier decisions made by CAF was incomplete in some manner. At the time of the 20 November 2000 decision, the CAF did not have the IRMS analysis but simultaneously claimed that the evidence was incomplete. When the IRMS analysis was presented, the CAF raised questions about the chain of custody of the sample used

for the IRMS analysis in its February 2001 and May 2001 decisions, but it is not clear from the record that it had all of the chain of custody documentation at the time.

23. Following each of these earlier decisions, the IAAF promptly raised questions to the CAF and asked it to reconsider. The CAF could have responded in each instance that its decision was final or that there was no legal basis to reconsider a decision already made. The CAF did not do so. Instead, the CAF acknowledged the IAAF's request, considered the information or questions, and made a new decision confirming the absence of sanctions on Zubek. In the course of this correspondence, which is quoted above, the CAS gave to IAAF the objective impression that each of the decisions previously adopted would be subject to review and thus was not final. For example, as noted above, the CAF told the IAAF on 13 November 2001 that the case documentation had been turned over to the Disciplinary Commission "for further negotiation." Because the CAF is the IAAF's member federation, it is entitled to rely upon these statements.

24. In contrast, the CAF's 14 December 2001 response to the IAAF's request for reconsideration expressly declared the 26 November 2001 decision to be final : "I am sorry, but it's my duty [to] hereby confirm that the Disciplinary Commis[s]ion's decision in the case of Roman Zubek is final."

25. Moreover, the records of the CAF's decisions show that in each instance CAF and its competent bodies in fact reconsidered the case. Even though the CAF came to the same result as originally, it re-opened and reconsidered the case. Indeed, in most instances, it listed different reasons for its decision: absence of IRMS testing, then chain of custody, then various rules. Any activity or decision that goes beyond stating that the previous decision is final and therefore untouchable is a new decision. Only after the decision of 26 November 2001 did CAF state "sorry," the decision "is final."

26. Therefore, even if the earlier decisions could also be considered final decisions within the meaning of Rule 21 (and the May 17. 2001 letter used that language), the decision of 26 November 2001 constituted a final, appealable decision.

27. The Tribunal therefore finds by a majority decision that the IAAF's appeal of the 26 November 2001 decision, which was within 60 days of the communication of this decision by the CAF to the IAAF, was timely. Moreover, because the final decision being appealed occurred after 1 November 2001, Rule 21 of the IAAF Rules applies.

7

28. Finally, the Tribunal notes the important policy issues involved in this decision. Acceptance of the CAF's argument would discourage cooperation between international federations and national associations. In this case, the IAAF worked to respect the CAF's decision-making process. Rather than bring appeals of the earlier decisions (which it could have done), the IAAF continued discussion with the CAF in the hope of making an appeal unnecessary. Acceptance of the CAF's argument would promote hasty and perhaps unnecessary appeals. Here, the IAAF proceeded deliberately in order to make sure that all relevant information was considered.

29. However, the IAAF must be careful not to let time limits in its own rules lapse. The IAAF has no authority to extend its own time periods. The time period for appeal of each of the earlier decisions, which was 6 months under the prior IAAF Rules, had lapsed. This Tribunal has jurisdiction now only because the CAF made an independent decision on 26 November 2001, which began a new time period under the new IAAF Rules.

Notice to Zubek

30. Zubek received notice of his provisional suspension on 30 August 2000; he was present at the 4 October 2000, 25 October 2000, and 20 November 2000 meetings of the CAF Disciplinary Commission.

31. Throughout the dispute, the IAAF corresponded with Zubek's national federation under the assumption that the CAF was forwarding the information to Zubek.

32. The CAF provided Zubek with his copy of the IAAF appeal when it was filed with CAS. Zubek chose never to respond to the IAAF or to enter any form of appearance. This failure to participate does not impact the proceedings.

33. At the hearing, the CAF stated that Zubek's coach had been aware of the hearing.

34. In a procedural order following the hearing, the Tribunal provided Zubek with the opportunity to comment on the evidence and arguments, as well as to produce new evidence and arguments, but Zubek never responded to this opportunity.

35. The Tribunal therefore finds by a majority decision that Zubek received fair notice of the CAS proceedings. Because the Tribunal has jurisdiction over this appeal pursuant to Rule 21 of the IAAF Rules, the Tribunal's jurisdiction applies to Zubek as well. See Rules 21.2 and 21.6. The Tribunal notes that to find for Zubek on this issue might allow national federations to protect their athletes from international regulation simply by refusing to give notice of relevant correspondence, decisions, or CAS or other international proceedings against the athlete.

36. The Tribunal also notes that it is not clear how additional notice to Zubek would have altered the outcome of this case. The CAF provided vigorous opposition to the IAAF throughout this case in order to protect its decision failing to sanction Zubek. It raised the same arguments that Zubek appears to have raised at the CAF disciplinary proceedings, and when offered an opportunity to present additional evidence or arguments, Zubek chose not to do so. In short, given the conclusive results of two independent and procedurally sound tests, additional notice would not have changed the result. Therefore, even if Zubek's claim of procedural irregularity had more substance, this Tribunal would be justified in dismissing it. See Melinte/IAAF (Arbitration CAS ad hoc Division (O.G. Sydney) 2000/015) (finding no harm in the denial of an athlete's right to be heard where such a hearing would not have altered the CAS Panel's ruling); see also S./FINA (rejecting argument based on insufficient "opportunity to address the IRMS analysis" because "the outcome of this appeal would [not have been] different even if a different procedure had been followed.")

Merits

37. Because this case was referred to CAS by virtue of Rule 21.3(ii), rather than by virtue of Note 3 of the Transitional Provisions, IAAF Rules as in force of November 1, 2001 apply. A doping offence pursuant to Rule 55.2(i) takes place when "a prohibited substance is present within an athlete's body tissues or fluids." Pursuant to Rule 55.3, the prohibited substances are listed in Schedule 1 to the Procedural Guidelines for Doping Control (PGDC). Schedule 1, Part I, of the PGDC list DHEA as a prohibited substance.

38. The presence of DHEA may result from endogenous production. For this situation, Schedule 1 PGDC in its introductory part provides:

> "Where a Prohibited Substance (as listed below) is capable of being produced by the body naturally, a sample will be deemed to be positive for that substance where the concentration of the substance or its metabolites and/or the ratios in the athlete's body tissues or fluids so exceeds the range of values normally found in humans so as not to be consistent with normal endogenous production.
>
> A sample may not be regarded as positive for a Prohibited Substance in any such case where the athlete proves by clear and convincing evidence that the concentration of the substance or its metabolites and/or their ratios in the athlete's body tissues or fluids is attributable to a pathological or physiological condition.
>
> Evidence may be obtained from metabolic profiles and/or the measurement of isotopic ratios (isotope ration mass spectrometry) to draw definite conclusions as to the exogenous origin of a Prohibited Substance or its metabolites."

This general provision, which applies to all prohibited substances, was introduced by the 2002 edition of the PGDC. However, it simply codifies the state of the relevant law previously applicable. Therefore it is immaterial which edition of the PGDC apply.

39. The concentration of DHEA in Zubek's "A" and "B" samples greatly exceeded the concentration that might result from endogenous production. These samples also show a far higher concentration of DHEA than his previous results.

40. Zubek and the CAF do not challenge the testing procedures utilized by the Prague laboratory.

41. The Prague laboratory's standard procedures thus provide sufficient evidence of Zubek's doping violation. Indeed, the Tribunal notes that Zubek himself implicitly consented to the sufficiency of this test by attempting to retract his earlier request for IRMS analysis.

42. IRMS analysis can differentiate between exogenous administration and endogenous production of DHEA. See UCI/S., DCU and DIF (Arbitration CAS 98/192) (finding DHEA violation based on GC/IRMS analysis); see also S./FINA (Arbitration CAS 2000/A/274 (finding that IRMS analysis "provided(d) conclusive scientific evidence of an exogenous administration of the prohibited substance testosterone or one of its precursors.")

43. IRMS analysis of Zubek's samples revealed decreased isotope values of androsterone and etiocholanolone consistent with the exogenous administration of DHEA. The Director of the Cologne Laboratory found that "the *only* possible source of the levels of etiocholanolone and androsterone found in the athlete's sample is the application and administration of a Prohibited Substance." (emphasis added) (Witness Statement of Professor Wilhelm Schanzer)). An advisor to the IAAF Anti-Doping Commission concurred that the IRMS analysis "clearly indicates the 'synthetic' origin of the urinary metabolites androsterone and etiocholanolone. . . . "

44. The IRMS analysis therefore contradicts Zubek's endogenous production argument. In addition, the Tribunal notes that Zubek's only authority for this argument came from his coach, who lacks the objectivity and the scientific training to bring such a claim. Compare B./ITU (Arbitration CAS 98/222) (recognizing an endogenous production argument supported by "expert opinion" and providing a specific explanation for the test results)

45. The Cologne laboratory's test results therefore provide a second, independent proof of Zubek's doping violation.

46. Zubek has produced no evidence of chain of custody problems related to the Cologne testing to counter the evidence on record demonstrating compliance with chain of custody requirements. There is no requirement that an athlete or his representative be present at the sealing of a sample to be sent for IRMS analysis. See IAAF Rule 55.11, which provides that procedural departures shall not invalidate testing findings "unless this departure was such as to cast real doubt on the reliability of such a finding."

47. The Tribunal unanimously concludes that both tests individually provide sufficient evidence to find a doping violation. Therefore, even if Zubek's challenge to the second procedure had merit, it would be irrelevant. The tribunal also unanimously concludes that the original decision of the CAF not to sanction Zubek for the doping violation was wrong.

48. IAAF Rule 60.2(a)(i) provides that an athlete's first doping offense involving a Schedule 1, Part I substance results in a period of ineligibility "for a minimum of two years from the date of the hearing at which it is decided that a Doping Offence has been committed." Where, as here, the athlete has already served a provisional suspension, the rule provides that "such a period of suspension shall be deducted from the period of

ineligibility imposed by the relevant Tribunal." Zubek served a provisional suspension from 3 September 2000 until 20 November 2000, a period of 78 days.

49. The decision as to the costs is based on Art. R 65 of the Code. The CAS Court Office of CHF 500.-, paid by the IAAF upon filing the statement of appeal, shall be kept by CAS (Art. R65.2 of the Code). Pursuant to Art. R65.3 of the Code, the Parties are required to advance their own costs as well as the costs of experts, witnesses and interpreters. It is then up to the Tribunal to decide which party is to bear the costs ultimately. In so deciding, the Tribunal must take into account the outcome of the proceedings, as well as the conduct and financial resources of the parties. Considering all the circumstances in the case, the Tribunal concludes that it is reasonable for both parties to bear their own costs and expenses incurred in connection with this appeal arbitration procedure.

* * * * *

DECISION

The Court of Arbitration for Sport rules:

1. Upholds the appeal filed by the IAAF on 31 January 2002.

2. Finds that tests of Roman Zubek's samples from the 13 May 2000 athletics meeting in Prague provide evidence of a doping violation.

3. Finds that the CAF failed to appropriately declare Roman Zubek ineligible.

4. Suspends Roman Zubek from competition for 21 months, 13 days (two years less the two months, seventeen days served under the provisional suspension) from the date of this decision; *i.e.*, until 10 May 2004.

5. Declares that the award is rendered without costs except for the Court Office fee of CHF 500.– (five hundred Swiss francs) already paid by the Appellant and which is retained by the CAS.

6. Declares that each party shall bear its own costs.

Done in Lausanne, 27 August 2002

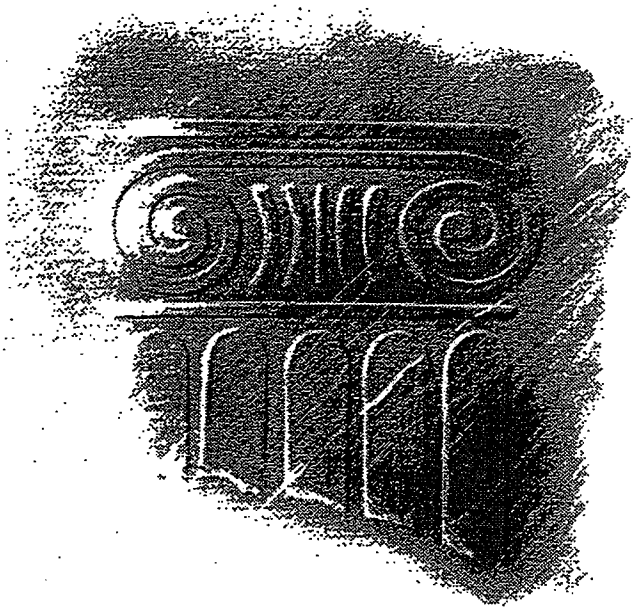
THE COURT OF ARBITRATION FOR SPORT

David Rivkin
President of the Panel

TAB 18

Tribunal Arbitral du Sport

Court of Arbitration for Sport



ARBITRAL AWARD

UNION CYCLISTE INTERNATIONALE (UCI), Lausanne, Switzerland

v/

Mr. Claus MOLLER, Arhus, Denmark
DANMARKS IDRAETS-VORBUND, Brondby, Denmark
DANMARKS CYKLE UNION, Brondby, Denmark

TAS 99/A/239 - Lausanne, April 2000



Tribunal Arbitral du Sport
Court of Arbitration for Sport

TAS 99/A/239 UCI v./Moller

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Mr. John **Faylor**, Attorney at law, Frankfurt, Germany
Arbitrators: Mr. Olivier **Carrard**, Attorney at law, Geneva, Switzerland
Mr. Peter **Leaver**, Q.C., Barrister-at-Law, London, England

between

UNION CYCLISTE INTERNATIONALE (UCI), Lausanne, Switzerland
represented by Mr. Philippe Verbiest, Attorney at law in Leuven, Belgium

and

Mr. Claus Moller, Arhus, Denmark
represented by Mr. Jean-Louis Dupont, Attorney at law in Brussels, Belgium

DANMARKS IDRAETS-VORBUND, Brondby, Denmark
DANMARKS CYKLE UNION, Brondby, Denmark

I. The Parties

1. The International Cycling Union (hereinafter "the UCI") is an international federation of national cycling associations which is recognized by the International Olympic Committee (hereinafter "the IOC"). The UCI is governed by its constitution and regulations, among them the "Cycling Regulations" and the "Antidoping Examination Regulations", the latter being most recently amended on 28 November 1999.

2. Mr. Claus Moller is a Danish citizen and a cyclist of the elite category. He is the holder of a rider's license issued by the Danmarks Cykle Union.

3. Danmarks Cykle Union (hereinafter "DCU") is the Danish national cycling federation. It is a member of both the International Cycling Union and the National Olympic Committee of Denmark. The latter recognizes the DCU as the exclusive federation for the sport of cycling in Denmark.

4. Danmarks Idraets-Forbund is the Danish National Olympic Committee (hereinafter the "Danish NOC") whose membership consists of one national sports federation, associate federation, sport organization or service beneficiary organization for each Olympic sport in Denmark. It is also recognized by the IOC.

II. Statement of Facts

1. Commencing on 03 March 1999 the Respondent, Mr. Moller, participated in the Vuelta Ciclistica a Murcia Costa Calida ("Vuelta a Murcia"), a road race on the UCI's World Calendar for elite riders. On 04 March 1999, Mr. Moller was required to submit to a doping test pursuant to the rules set down in the UCI's Antidoping Examination Regulations (hereinafter the "AER"). Upon analysis of the "A" Sample by the Laboratorio de Control del Dopaje of the Spanish Department of Education and Culture in Madrid, a laboratory approved by the UCI and the IOC, it was determined that the Respondent tested positive for testosterone with a T/E-ratio of 7:0.

2. By registered letter of 25 March 1999, the UCI Antidoping Commission informed the DCU of these test results and requested implementation of the procedure stipulated in Articles 60 to 65 of the AER.

3. By telefax dated 31 March 1999, the Respondent requested a counter-analysis of the "B" Sample and an endocrinological examination to be carried out by the Laboratorio de Control del Dopaje (the "Madrid Laboratory"). Although the Respondent had been offered the choice of having the endocrinological examination carried out in Cologne or Lausanne, he requested that it should be carried out in Madrid, as he lived and trained near Madrid, and he believed that it was likely to be less expensive for him to have the examination carried out there.

4. The analysis of the "B" Sample on 08 April 1999 confirmed the results of the "A" Sample (T/E ratio of 7.0). The Respondent was informed of this result by letter of the UCI dated 13 April 1999. The UCI granted the Respondent's request to have the endocrinological examination performed at the Madrid Laboratory. The endocrinological examination was duly arranged to take place in Madrid on April 19, 1999.

5. Upon receipt of the endocrinological analysis and the findings of GC/C/IRMS analysis which were performed by the Institut für Biochemie in Cologne for the Madrid Laboratory, the results were reported by the UCI's Antidoping Commission to the DCU on 09 July 1999 as follows:

> *"The analysis of sample no. 0055749 taken at the above-mentioned race (laboratory registration 83044,) has revealed that the differences between the levels of testosterone metabolites and precursor are only explainable by the use of an anabolic steroid like testosterone, androstenedione, androstendiol, etc. As a result of this we consider the sample code mentioned above positive.*

6. In addition, the report to the DCU established that the high T/E ratio established in the last urine sample of a total of 14 samples taken during the endocrinological examination revealed a manipulation. The report stated:

> *"In this case also the difference between the levels of testosterone metabolites and precursor are only explainable by an application of anabolic steroid like testosterone, androstenedione, androstendiol, etc."*

7. On the basis of these results, the Anti-Doping Commission of the UCI determined that the Respondent did not have a naturally elevated T/E ratio and requested the DCU by letter of 09 July 1999 to implement proceedings pursuant to Articles 69 et.seq. of UCI's AER.

8. By letter dated 15 July 1999, the DCU notified the UCI's Antidoping Commission that they had "handed over" the procedure to the Danish NOC which they described as the "ruling body of doping cases for all athletes in Denmark". In this letter, the DCU pointed out that the Danish NOC had written to the Respondent that

> *"..... he is suspended for a month until further notice and asked us to withdraw his license We shall contact the rider by telephone and ask for his license."*

9. In response to this letter, the UCI informed the DCU by letter of 23 July 1999 that

> *"A rider's license can not be withdrawn before his sentence is pronounced. We also draw your attention to the fact that this matter is governed exclusively by the UCI Anti-Doping Examination Regulations."*

10. In this letter the UCI specifically referred the DCU to the Nielsen and Skelde cases decided by the Court of Arbitration for Sport (hereinafter "the CAS") in 1998 (CAS 98/181 and CAS 98/192 respectively). In the light of the Danish NOC's reluctance to apply the AER, the DCU was specifically requested to ensure that "your (i.e. the DCU's) federation judges this case itself."

11. On 19 August 1999, the DCU forwarded the judgement of the Doping Tribunal of the Danish NOC in the case to the UCI with an English translation. The Doping Tribunal imposed a two year suspension upon the Respondent barring him from participation in "all training and competitive activities under the National Olympic Committee and Sport Confederation of Denmark."

12. The UCI contends that the Danish NOC has "appropriated" the jurisdiction of the DCU to decide the Respondent's case and has incorrectly applied its own Anti-Doping Regulations and cites the decisions of the CAS in the Nielsen and Skelde decisions. If, as stated by the UCI, the decision of the Doping Tribunal of the Danish NOC must be considered as the decision rendered by the national federation referred to in Article 84

AER, the decision of the Doping Tribunal is appealable to the CAS on this basis. Accordingly, the UCI contends that the Doping Tribunal of the Danish NOC has erred in imposing a two year suspension commencing as of 15 July 1999. The UCI's AER allows a maximum suspension of one (1) year commencing as of the date on which the judgement is pronounced. Notwithstanding the AER rule, however, the UCI is willing to accept that the suspension in the Respondent's case begins as of 15 July 1999 in accordance with the suspension imposed by the Danish NOC.

13. The UCI petitions the CAS to annul the contested decision of the Doping Tribunal, to disqualify the Respondent from the Vuelta a Murcia 1999, to decree a suspension for six (6) months minimum to one year maximum and to impose a fine of CHF 2,000.– minimum to CHF 4,000.– maximum in accordance with Article 91 (1) AER.

14. The Respondent concurs with the UCI's assessment of the jurisdiction issue and states that the Danish NOC "confiscated" this case and violated the rules set down in the UCI's AER. The Danish NOC should have either respected the jurisdiction of the DCU in the current proceedings or at least applied the AER exclusively. To this extent, the decision of the Doping Tribunal of the Danish NOC must be annulled. If sanctions are to be imposed on the Respondent these must be based upon the sanctions laid down in the AER.

15. In his answer to the Statement of Appeal, the Respondent contends that the two year sentence imposed by the Doping Tribunal and UCI's petition for sanctions be dismissed on the grounds that penalties of this nature violate general principles of Swiss law, in particular, Article 4 of the Swiss Constitution regarding the proportionality of the penalty and the degree of fault or guilt. In addition, the Respondent contends that the suspension imposed was disproportionate to the legitimate objective (the fight against doping), and submits that in consequence there have been breaches of EC competition law and an infringement of the individual freedom of an athlete to enter unrestrained into commercial transactions. Lastly, the Respondent contends that there was a failure to discharge burden of proof given the "inadequacy of the examinations conducted when trying to establish the existence of a physiological or pathological condition." The results of these examinations are said to be unreliable due to the lack of qualification of the official conducting the analysis at the Madrid Laboratory.

It is implicit in his submissions that the Respondent contends that the burden of proof rests on the UCI throughout, and that even when the UCI has adduced evidence of a breach of the AER, he has no burden of proof to discharge.

16. The Respondent petitions the Panel to find that a doping offence was legally not committed; alternatively, to shorten the suspension to either a symbolic period or to a maximum of four (4) months. In addition, however, the Respondent petitions the Panel to grant the Respondent damages to be determined ex aequo et bono on the basis of the damages caused to the career of the Respondent.

III. In Law

A. Procedural Issues

Admissibility of the Appeal, Parties to the Dispute

1. The UCI's appeal of the decision of the Doping Tribunal dated 5 August 1999 was filed on 19 September 1999. The UCI was informed of this decision by letter of the DCU on 19 August 1999. Rule 49 of the Code of Sport-Related Arbitration (hereinafter "the Code") sets the time limit for appeal at 21 days from the communication of the decision, provided the statutes or regulations of the federation, association or sports body concerned do not set a different limit. Pursuant to Article 86 of the UCI's AER, the statement of appeal must be lodged with the CAS within one (1) month from receipt of the decision by the Appellant. UCI's Statement of Appeal dated 19 September 1999 was filed, therefore, with the CAS in a timely manner.

2. As held in the Nielsen and Skelde decisions referred to above, the Panel holds in this case that the Doping Tribunal of the Danish NOC acted as the "competent body" of the DCU for adjudicating doping defenses within the meaning of Article 82 and Article 84 AER. The actions, measures and decisions of the Danish NOC's Doping Control Commission and its Doping Tribunal must be attributed to the UCI as if these were the UCI's own actions, measures and decisions. For this reason, the Danish NOC cannot be deemed a party to these proceedings and its letters of 12 October 1999 and 02 December 1999 have no dispositive effect.

Jurisdiction

3. Both the UCI and the Respondent concur that the Doping Tribunal of the Danish NOC has erred in not applying the AER in the present case. Application of the Anti-Doping Regulations of the Danish NOC by its Doping Tribunal stands in clear violation of the Olympic Charter and the new Anti-Doping Code of the Olympic Movement. The Panel refers to the reasoning set forth in the CAS decision UCI v. Skelde of 21 October 1998 (CAS 98/192). In this regard, the Panel wishes to emphasize again that the Danish NOC continues to remain the victim of a self-induced contradiction. This is clearly evident in the letter of the Danish NOC to the CAS dated 12 October 1999 in which the President states:

> *"According to the Doping Regulations of the Danish Cycling Union, the Doping Tribunal of the NOC and Sports Confederation of Denmark is indeed the "competent body pursuant to the regulations of the National Federal of the rider", ref. article 71 of the Anti-Doping Examination Regulations of the UCI. Therefore, it is wrong to suggest that the Danish Cycling Union failed to judge the case.*
>
> *However, according to the regulations of the NOC and Sports Confederation of Denmark, the Doping Tribunal must apply the NOC's rules in all doping cases and can not apply the regulations of any international federation or other body. We are aware of the fact that, for the appeals case, only UCI regulations will be applied. This does not, however, change the fact that Mr. Moller's doping offence was an offence against the anti-doping regulations of both the UCI and the NOC and Sports Confederation of Denmark. In accordance with our regulations, Mr. Moller was sentenced to a suspension of two (2) years from all sports in Denmark from 15 July 1999. During this period, he is not allowed to be a member of any Danish sports club or to take part in organized training or national competitions or to represent his federation internationally. This is a consequence of the fact that, on the national level, the jurisdiction in doping cases rests solely with the NOC and Sports Confederation of Denmark in accordance with our anti-doping regulations.*
>
> *Should CAS decide on shorter suspension, Mr. Moller would, however, after the end of CAS's suspension but before the end of the Danish suspension, be allowed to train and compete outside Denmark and to compete in international races in Denmark, provided these races are on the UCI Calendar."*

The effect of the Danish NOC's stance is that a Danish athlete is liable to sanctions both under Danish regulations and also under international regulations. This is a form of double jeopardy which the Panel views with considerable concern, but which the Danish NOC appears to view with equanimity. It cannot be acceptable or just for a Danish athlete to be punished twice for the same offence: one punishment taking effect only in Denmark, the other punishment taking effect everywhere else in the world. The Panel would seek to persuade the Danish NOC to adopt the international standard so

that Danish athletes do not suffer this double jeopardy. If the Danish NOC were to follow this course, the international punishment would take effect also in Denmark.

4. If the Danish NOC continues to insist upon exercising its own (original) jurisdiction based upon its own rules and, in so doing, eschews the jurisdiction of the international federations and the application of their rules in deciding doping cases, it effectively denies the accused Danish athlete his right to be heard before an international tribunal. Moreover, and more seriously, the Danish NOC effectively deprives the accused Danish athlete of his right to appeal a decision having international effect. It does not lie within the competence of the CAS to act as a first level instance of justice for the hearing of cases which should, on the basis of the rules of an international federation, come before the designated judicial tribunals of the international federations. If an international federation cannot provide its own tribunals for adjudicating anti-doping violations, it must ensure that the national federations to which it delegates its jurisdiction apply the rules of the international federation. If the national federations cannot provide this assurance, then the international federation must resort to the sanctions set forth in its charter to ensure the compliance of its member national federations.

5. In the case at hand, the Panel acknowledges that the Danish NOC has exercised jurisdiction which has been rightfully vested in the DCU with regard to adjudicating doping violations of elite riders who compete in international competition. The question is academic whether this jurisdiction has been delegated to the Danish NOC or whether it has been "appropriated" on the basis of the Danish NOC's charter. The refusal of the Danish NOC and its Doping Tribunal to apply the UCI's AER have effectively deprived the Respondent of a first-instance international tribunal before which he can be heard. The consequence for the athlete is demonstrated clearly in the legal uncertainty which, in the present case, has arisen from the differing commencement dates for the imposition of a suspension. This legal confusion cannot and should not be allowed to continue.

B. The Merits

6. Article 2 of UCI's AER prohibit the use of pharmaceutical categories of substances and doping methods which appear on the list of doping agents and methods adopted by the UCI president. Subsection 3 of this Article 2 sets forth a rule of strict liability regarding the punishment of an athlete found to have used a prohibited substance.

"Should a doping method be found to have been used or should the analysis or other evidence reveal the presence or administration of a doping agent or any substance likely to influence the result of the analysis, the rider shall be punished."

7. The list of categories of doping substances and methods which became effective as of 11 May 1998 prohibit the use of anabolic agents, among them androgenic anabolising steroids. Included in this group of androgenic anabolic steroids are substances such as androstenedione and testosterone.

8. On the basis of the analysis performed on the Respondent's "A" and "B" Samples, including the subsequent endocrinological analysis undertaken by the Madrid Laboratory (Spain) at the specific request of the Respondent, it was determined that the high testosterone/epitestosterone ratio established in the "A" and "B" Samples could be explained only by the use of an external anabolic steroid such as testosterone, androstenedione, androstendiol, etc. In addition, the analysis of the 14 urine samples taken during the course of the endocrinological examination revealed that the last sample, in which an extraordinarily high T/E ratio of 11.8 was measured, could only be explained on the basis of an external manipulation. The results of the analysis confirmed that the Respondent did not have a naturally elevated T/E ratio.

9. Having established that the T/E ratio of 7.0 exceeded the maximum ratio of 6.0, it was correctly determined by the UCI's Anti-Doping Commission that the Respondent proved positive in the doping tests which were undertaken on 4 March 1999. This fact was also confirmed in the decision of the Doping Tribunal of the Danish NOC on 5 August 1999. There is no evidence that the Doping Tribunal erred in this assessment of fact.

10. The Panel does not concur with the submission of the Respondent that, in cases of testosterone doping, the rule of strict liability as set forth in the case rulings of the CAS cannot be applied. The holdings contained in such CAS decisions as *National Wheelchair Basketball Association v/ International Paralympic Committee, Award of 15 March 1996, CAS 95/122; USA Shooting and Q. v/ International Shooting Union (UIT), Award of 23 May 1995, CAS 94/129, L. v/ Fédération Internationale de Natation Amateur (Fina), Award of 22, April 1996, CAS/95 141, L. v/ Fédération Internationale de Natation Amateur (Fina), Award of 14 February 1996, CAS 95/142)* clearly set out the parameters and the legal reasoning supporting the strict liability principle. The result of the doping test performed on the Respondent established the presence of a prohibited substance. The presence of this substance in the Respondent's body, even if one were to

assume the absence of guilt or intent, would quite likely have impacted upon his performance in competition. His competitors, whose bodies were free of performance-enhancing substances, would have been placed at an unfair disadvantage. There can be no doubt that a suspension imposed on the basis of the strict liability principle can and will lead in individual cases to unfairness and injustice, for example, to an athlete who unwittingly takes a wrong pill or who is intentionally the victim of another's malevolence. The Panel is also not blind to the recent scholarly debate and public hearings before governmental agencies and committees regarding the continued practice of the strict liability principle in sport. But, as the CAS held in *USA Shooting v/ UIT*, the continued application of the strict liability principle, however unfair it may appear to be in a given situation, appears to be "a laudable policy objective." A set of rules based on proving the athlete's subjective guilt or intent in the taking of a performance-enhancing substance may indeed prevent the occurrence of accidental unfairness to an unwitting athlete. His return to competition would, however, impose intentional unfairness on all those athletes who have played by the rules. The Panel believes that the reasoning which justifies the application of the UCI's strict liability rule, when evaluated in light of the UCI sanctions, their duration and amounts, which can be imposed on the basis of Article 91 AER will indeed withstand the future scrutiny of the civil and constitutional courts both on a national and international level.

11. The Panel has also given consideration to the issue of burden of proof within the context of the "in dubio pro reo" rule, an issue which is addressed in the *Bernhard v. ITU* ruling (CAS 98/222). The Respondent has quoted extensively from this decision in his brief and seems to suggest that it is the burden of an anti-doping enforcement body to eliminate the possibility of alternative modes of ingestion or self-generation of the prohibited substances in the body and that it is incumbent upon the enforcing authority to explore and exclude all such possibilities before the strict liability rule can be applied. Even if it were to be assumed that the principle of "in dubio pro reo" has not been entirely eliminated by the doctrine of strict liability, the Panel has found no evidence, and no evidence has been offered by the Respondent, which could generate doubt as to how the high T/E ratio measured in the Respondent's body was achieved other than from exogenous sources.

12. The AER rules allow an endocrinological analysis of the urine samples in order to determine whether the high T/E ratio can be explained on the grounds of physiological or pathological conditions. The Respondent exercised his right to undergo this examination. He requested to be permitted to use the Madrid Laboratory. The results of the analysis confirmed that the cause of the high T/E ratio was attributable to external

sources. Most surprisingly, the Madrid Laboratory concluded that the exceedingly high T/E ratio established in the last urine specimen taken during the five day course of the endocrinological analysis indicated external manipulation. It cannot be the responsibility of the federation (in this case the UCI), nor can it accord with the basic principles of natural law and right of privacy of an individual, that an athlete can be forced to undergo a physiological "fishing expedition" on and inside his body in order to exclude all possibilities of inadvertent external introduction and/or internal generation of a doping substance. This would be the result if the submission advanced by the Respondent were correct. The Panel's view is that if a positive sample is produced, the burden of proving that the sample is positive because of a physiological or pathological condition must rest on the athlete. So to hold is not to decide that testosterone doping is not a strict liability offence, or to water down in some way the stringency of such a rule. The principle of strict liability in such cases is well-established. However, if an athlete can demonstrate by credible evidence that the sample was positive because of a physiological or pathological condition in him (or her), then no offence has been committed, because in such a case there has been no use of a doping agent or method, and it is such use that is prohibited in Article 2 AER. Such an approach accords with that which appears on page 3 of UCI's "List of categories of doping substances and methods" where the following statement can be found :

> *"For testosterone, a sample shall be considered as positive if, as a result of the administration of testosterone or any other manipulation, the urine Testosterone/Epitestosterone (T/E) ratio is increased to more that 6.0, unless it can be proved that this ratio is due to a physiological or pathological condition."*

It appears to the Panel to be implicit, if not explicit, in this statement, that the burden of proving that the ratio is due to a physiological or pathological condition is on the athlete. This conclusion accords both with common sense and with justice. Unless such a conclusion were reached, it would be open to an athlete simply to raise the argument that the T/E ratio found was due to a physiological or pathological condition, and thereby force the federation to embark upon a lengthy and expensive testing procedure. As the proof of the existence of such a condition will involve detailed testing of the athlete, it again seems to the Panel to accord both with common sense and with justice for the burden of proving the existence of such condition to rest on the athlete.

13. The current state of scientific analysis allows endocrinological examination by use of GC/C/IRMS testing in order to exclude the possibility of internal physiological or pathological conditions which cause a naturally high E/P ratio. These tests were undertaken and were found to confirm that no such condition existed in the

Respondent's body. No evidence was adduced by the Respondent in support of his allegation that the test results were unreliable. For this reason, we reject this allegation.

14. The Doping Tribunal of the Danish NOC erred in imposing a two year suspension upon the Respondent commencing as of 15 July 1999. In addition to the sanction of disqualification set forth in Article 91 (1), the AER rules mandate that an athlete who is tested positive for a prohibited substance will be subject to suspension from competition for six (6) months minimum to one year maximum. In addition, a fine of between CHF 2000.-- minimum and CHF 4000.-- maximum must be imposed. The Panel holds that the two year suspension imposed by the Doping Tribunal is in conflict with Article 91 AER. In rendering its decision to terminate the suspension effective 31 March 2000, the Panel has taken into consideration the temporary period of the suspension imposed by the Danish NOC commencing on 15 July 1999 and has determined that a suspension until 31 March 2000 is fair and appropriate in light of the conditions and circumstances of this case and the jurisdictional conflicts which currently burden the relationship between the UCI, the DCU and the Danish NOC. For the same reason, the Panel has imposed the minimum fine of CHF 2000.--.

15. The term of the suspension imposed by the Panel takes into consideration the period of normal inactivity for a rider whose principal activity is cycling, namely the period 1 November through 31 January of each year. Accordingly, the term of the suspension shall be deemed as having been imposed during the periods of 6 August 1999 through 31 October 1999 and 01 February 2000 through 31 March 2000 (Article 94 § 2)

C. Costs

In view of the outcome of the case, the Panel renders its decision without awarding costs. The CHF 500.-- filing fee paid by the UCI shall be retained by the CAS (Rule 65.1 and 65.2 of the Code). The parties to this dispute shall bear their own costs.

ON THESE GROUNDS

The Court of Arbitration for Sport pronounces:

I. The decision of the Doping Tribunal of the National Olympic Committee and Sports Confederation of Denmark (Danmarks Idraets-Forbund) of 05 August, 1999, shall be modified as follows:

(1) The Respondent Moller shall be disqualified from the Vuelta a Murcia 1999.
(2) The term of the sentence imposed by the Doping Tribunal of the National Olympic Committee and Sports Confederation of Denmark shall terminate effective March 31, 2000.
(3) A fine shall be imposed on the Respondent Moller in the amount of CHF 2,000.--.
(4) All further motions for relief are denied.

II. The award is pronounced without costs, except for the Court Office fee of CHF 500.-- (five hundred Swiss Francs) paid by the Appellant which is retained by the CAS.

II. The parties to this dispute shall bear their own costs.

Lausanne, April 14, 2000

THE COURT OF ARBITRATION FOR SPORT

President of the Panel

John A. Faylor

Arbitrators

Olivier Carrard

Peter Leaver, Q.C.

TAB 19



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2005/A/936 UCI v/ Bakker & KNWU

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Ercus Stewart SC, Barrister, Dublin, Ireland

Arbitrators: Mr Olivier Carrard, Attorney-at-Law, Geneva, Switzerland

Mr Hendrik Willem Kesler, Attorney-at-Law, Zeist, The Netherlands

Clerk of the Court: Mr Adrian Holloway, Attorney-at-Law, Geneva, Switzerland

in the arbitration between

INTERNATIONAL CYCLING UNION, Aigle, Switzerland
represented by Mr Philippe Verbiest, Leuven, Belgium

- Appellant -

and

ERWIN BAKKER, Liessel, The Netherlands
represented by Mr Maarten Vrolijk, Eindhoven, The Netherlands

- first-named Respondent -

&

KONINKLIJKE NEDERLANDSCHE WIELREN UNIE, Woerden, The Netherlands

- second-named Respondent -

Tribunal Arbitral du Sport
Court of Arbitration for Sport

I. FACTS

1. Parties

1.1 The International Cycling Union or Union Cycliste Internationale (UCI) is the international body governing disciplines related to cycling.

1.2 Koninklijke Nederlandsche Wielren Unie (KNWU) is the Dutch national cycling federation and a member of UCI.

1.3 Mr Erwin Bakker is cyclist of elite category with a licence issued by the KNWU.

2. The UCI Rules

2.1 Art. 14 of the Anti-Doping Rules of the UCI Cycling Regulations provides:

"Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in article 15."

Art. 15

"The following constitute anti-doping rule violations:

1. The presence of a Prohibited Substance or its Metabolite or Markers in a Rider's bodily Specimen.

1.1 It is each Rider's personal duty to ensure that no Prohibited Substance enters his body. (...) Accordingly, it is not necessary that intent, fault, negligence or knowing use on the Rider's part be demonstrated in order to establish an anti-doping violation under article 15.1.

1.2 Except in those substances for which a threshold concentration is specifically identified in the Prohibited List, the detected presence of any quantity of a Prohibited Substance of its Metabolites of Markers in a Rider's Sample shall constitute an anti-doping rule violation."

2.2 According to the 2005 Prohibited List the Prohibited Substances includes:

"Testosterone"

and provides:

"Where a Prohibited Substance (as listed above) is capable of being produced by the body naturally, a Sample will be deemed to contain such Prohibited Substance where the concentration of the Prohibited Substance or its metabolites or markers and/or any other relevant ratio(s) in the Athlete's Sample so deviates from the range of values normally found in humans that is unlikely to be consistent with normal endogenous production. A Sample shall not be deemed to contain a Prohibited Substance in any such case where the Athlete proves by evidence that the concentration of the Prohibited Substance or its metabolites or markers and/or the relevant ratio(s) in the Athlete's Sample is attributable to a physiological or pathological condition."

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2.3 According to art. 256 of the Anti-Doping Rules:

"A violation of these Anti-Doping Rules in connection with an In-Competition test automatically leads to Disqualification of the individual result obtained in that Competition."

2.4 According to art. 261 of the Anti-Doping Rules:

"Except for the specified substances identified in article 262, the period of Ineligibility imposed for a violation of article 15.1 (presence of Prohibited Substance or its Metabolites of Markers), (...)

First violation: 2 (two) year's ineligibility.

However, the License-Holder shall have the opportunity in each case, before a period of Ineligibility is imposed, to establish the basis for eliminating or reducing this sanction as provided in articles 264 and 265."

2.5 Art. 264:

"If the Rider establishes in an individual case involving an anti-doping rule violation under article 15.1 (...) that he bears No Fault or Negligence for the violation, the other-wise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in a Rider's Specimen in violation of 15.1 (presence of a Prohibited Substance), the Rider must also establish how the Prohibited Substance entered his system in order to have the period of Ineligibility eliminated. (...)"

2.6 Art. 265:

"This article 265 applies to anti-doping rule violations involving article 15.1 (presence of Prohibited Substance or its Metabolites or Marker) (...). If a License-Holder establishes in an individual case involving such violation that he bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the minimum period of Ineligibility otherwise applicable. (...)"

2.7 Art. 280 of the Anti-Doping Rules provides:

"The following decisions may be appealed to the Court of Arbitration for Sport:

a) The decision of the hearing body of the National Federation under article 242"

2.8 Art. 281 of the Anti-Doping Rules provides:

"In cases under article 280a), the following parties shall have the right to appeal to the CAS:

c) the UCI"

2.9 Art. 285 of the Anti-Doping Rules provides:

"The statement of appeal by the UCI (...) must be submitted to the CAS within 1 (one) month of receipt of the full case file from the hearing body of the National Federation. Failure to respect this time limit shall result in the appeal being disbarred. Should the Appellant not request the file within 15 days of receiving the full decision as specified in article 247, the time limit for appeals shall be 1 (one) month from the reception of that decision."

3. The doping test and the proceedings so far

3.1 From 24 March to 27 March 2005, Mr Bakker participated in the Mountain Bike Cycling Race *"Vuelta Internacional a Valladolid"* in Spain.

3.2 On 26 March 2005, after having competed, he had to undergo a doping control conducted by the UCI.

3.3 The samples were sent to the *"Laboratorio de Control del Dopaje"* (the Laboratory) in Madrid.

3.4 On 15 April 2005, the laboratory reported to KNWU that the A sample showed the presence of *"Testosterona/Epitestosterona 18.30 Incertidumbre/uncertainty3.4 – IRMS Positivo/Positive."*

3.5 On 21 April 2005, the case was referred by the UCI to the KNWU.

3.6 After Mr Bakker requested an analysis of the B sample, the Laboratory issued a certificate on 27 June 2005 stating: "Testosterona – IRMS Positivo/Positive.

3.7 On 29 June 2005, a hearing was held before the KNWU Anti-Doping Committee and was attended by Mr Bakker and his team leader, Mr R. Poels.

3.8 On 1 July 2005, the KNWU Anti-Doping Committee issued a decision that acquitted Mr Bakker from any charges related to a doping offence.

3.9 The decision was received by the Appellant by fax on 4 July 2005 and by post on 15 July 2005.

3.10 On 4 July 2005, the Appellant asked the KNWU to send the complete file.

3.11 The Laboratory test reports were received by the Appellant on 3 August 2005.

3.12 A statement of appeal was filed before the CAS on 4 August 2005.

3.13 Each party designated an arbitrator. The third arbitrator - the President – was in turn appointed by the President of the Division. Thus the Panel sat in the following composition (which was accepted by the parties at the hearing on 2 February 2006):

President: Mr Ercus Stewart
Barrister, Dublin, Ireland

Tribunal Arbitral du Sport
Court of Arbitration for Sport

Arbitrators: Mr Olivier Carrard
Attorney-at-Law, Geneva, Switzerland

Mr Hendrik Willem Kesler
Attorney-at-Law, Zeist, The Netherlands

3.14 On 22 December 2005, the President of the Panel issued an order of procedure that was signed by the parties.

3.15 In accordance with article R28 of the Code of Sports-related Arbitration (in the version in force as of January 2004 and hereinafter referred to as the "Code"), the seat of the Panel is established at the Secretariat of the CAS, Chateau de Béthusy, 2 Avenue de Beaumont, 1012 Lausanne.

3.16 In accordance with art. R29 of the Code, the official language of this arbitration is English.

3.17 KNWU filed its answer brief on 12 October 2005.

3.18 The hearing was held in Lausanne on 2 February 2006.

3.19 At the beginning of the hearing, Mr Bakker filed a document containing several contentions and motions, some of them were withdrawn. He also made an oral statement during the hearing.

3.20 KNWU did not attend the hearing.

4. The Appellant's contentions and motions

4.1 The Appellant submits that the Laboratory report of the A sample showed Testosterone ratio of 18.3 that was confirmed by the B sample analysis.

4.2 As Testosterone is on the 2005 Prohibited List and the substance was declared as exogenous, a period of ineligibility of two years shall be imposed on Mr Bakker and he shall be disqualified from the "*Vuelta Internacional Valladolid 2005*".

4.3 Accordingly, the Appellant asks the Panel to reverse the decision of the KNWU issued on 1 July 2005.

5. KNWU's contentions and motions

5.1 KNWU, relying on the report of Dr. P. H. Th. Koch, submits that the high level of testosterone/epitestosterone found in Mr Bakker's urine has a natural origin.

5.2 Accordingly, KNWU considers that its Anti-Doping Committee has made a correct application of the Anti-Doping Rules and its decision has to be upheld.

5.3 For these motives, this Respondent requests the Panel to reject the appeal.

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6. **Mr Bakker's contentions and motions**

6.1 Based on a medical examination provided by the Elkerliek Hospital, the medical certificate drafted by his doctor and the fact that intense exercise may cause an important variation of the level of testosterone, Mr Bakker submits that the testosterone found in his urine has an endogenous character.

6.2 Relying on various medical publications, the Respondent contends that no further researches were carried out by the Laboratory in relation to the origin of the testosterone. Accordingly, he considers that the burden of proof regarding the presence of exogenous testosterone is not met.

6.3 On a formal point of view, Mr Bakker submits that the appeal has been filed too late by the UCI and should therefore be considered as inadmissible.

6.4 For all those motives, Mr Bakker requests the Panel to reject the appeal.

II. **IN LAW**

7. **Competence of the CAS**

7.1 The competence of the CAS to act as an appeal body is based on art. R47 of the Code which provides that:

> *"A party may appeal from the decision of a disciplinary tribunal of similar body of a federation, association or sports body, insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports body."*

and on article 280 of the UCI Anti-Doping Rules.

7.2 Moreover, the jurisdiction of the CAS is explicitly recognised by the parties in the order of procedure they have signed and accepted at the hearing on 2 February 2006.

7.3 Under Art. R57 of the Code, the Panel has the full power to review the facts and the law. The Panel did not therefore examine only the formal aspects of the appealed decision but held a trial *de novo*, evaluating all facts, including new facts, which had not been mentioned by the parties before the KNWU Anti-Doping Committee and all legal issues involved in the dispute.

8. **Applicable law**

8.1 Art. R58 of the Code provides:

> *The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in absence of such choice, according to the law of the country in which the federation, association or sports body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems*

appropriate. In the latter case, the Panel shall give reasons for its decision."

8.2 Such provision was expressly mentioned in the Order of Procedure signed by the parties.

8.3 The "*applicable regulations*" in this case are the UCI rules.

8.4 The parties have not expressly or impliedly agreed on a choice of law applicable to these proceedings before the CAS. Therefore, the rules and regulations of UCI shall apply primarily, and Swiss law, as UCI is domiciled in Switzerland, shall apply subsidiarily.

9. **Admissibility**

9.1 The Appeal is admissible for the following reasons:

9.2 The KNWU Anti-Doping committee decision was sent by fax to the parties on 4 July 2005 and received by the Appellant by post on 15 July 2005.

9.3 The Appellant's statement of appeal was filed on 4 August 2005, namely within the one month time limit set by art. 285 of the UCI Anti-Doping Rules.

9.4 In this case, the Appellant has met the deadline set by the UCI Rules.

9.5 Besides, the appeal complies with all other requirements of Art. R47 and R48 of the Code.

10. **Examination of the contested decision**

10.1 **The legal presumption under the Anti-Doping Rules**

10.1.1 According to art. 15.1 the presence of a Prohibited Substance or its Metabolites or Markers in a Rider's bodily Specimen constitutes an anti-doping rule violation.

10.1.2 Under the UCI Anti-Doping Rules an offence has therefore been committed when it has been established that a prohibited substance was present in the athlete's body. There is thus a legal presumption that the athlete is responsible for the presence of a prohibited substance.

10.1.2 The burden of proof of UCI lies in art. 16 of the Anti-Doping Rules, which provides the following:

"The UCI and its National Federations shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI or its National Federation has established an anti-doping rule violation to the comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt."

10.1.3 In the case at hand, the question to be answered is whether the UCI has met its burden of proof or whether the conditions provided for at art. 15.1 are met.

10.1.4 As such, the findings of the Laboratory are sufficient to consider that Mr Bakker violated anti-doping rule:

- For the reasons set out in 8.3 above the UCI Anti-Doping Rules were applicable to him.

- According to article 18 of the UCI Anti-Doping Rules, WADA-accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for laboratory analysis.

- Mr Bakker did not contest the fact that the sampling procedure and laboratory analysis were correctly performed.

10.1.5 UCI has thus met its burden to prove that in proper test proceedings, a prohibited substance was found in the athlete's urine.

10.2 Rebuttal of the presumption in the Respondent's case

10.2.1 As the UCI has demonstrated that in a properly performed test procedure a prohibited substance has been found in the athlete's urine, the burden of proof shifts to the Respondents who have the opportunity to establish that either the test is not valid or that the athlete bears no fault or negligence in relation to the violation.

10.2.2 The KNWU Anti-Doping Committee considered that the testosterone found in the Rider's urine might result from a combination of two causes: a low endogenous testosterone level and a small amount of hormone that the Rider ingested through food supplements.

Such ingestion could have a greater influence on the T/E ratio than in someone with higher testosterone levels.

10.2.3 Mr Bakker submits that, according to the examination carried out by Dr P. H. Th. Koch, there is no evidence that he used hormone preparation.

10.2.4 This report drafted by the doctor mentions a *"low testosterone level which may reflect both free and total testosterone"*.

10.2.5 In the document filed before the Panel, Mr Bakker argues that *"It is scientifically accepted that a high level of Testosterone has to be followed by further research before concluding an exogenous Testosterone. Only when these researches have taken place a sound decision is possible regarding the endogenous or exogenous character of Testosterone. As these complementary researches were not carried out, the burden of proof regarding the presence of exogenous testosterone is not met."*

10.2.6 On the matter related to a prohibited substance being produced by the body naturally, the 2005 Prohibited List provides:

"Where a prohibited substance is capable of being produced by the body naturally, a sample will be deemed to contain such prohibited substance where the concentration of the prohibited substance or its metabolites or markers and/or any other relevant ratio(s) in the Athlete's sample so deviates from the range of values normally found in humans that is unlikely to be consistent with normal endogenous production.

(...)

If the laboratory has reported the presence of a T/E ratio greater than four (4) to one (1) in the urine, further investigation is obligatory in order to determine whether the ratio is due to a physiological or pathological condition, except if the laboratory reports an adverse analytical finding based on any reliable analytical method, showing that the prohibited substance is of exogenous origin."

10.2.7 According to the report issued by the Laboratory, the urines of the Respondent showed a Testosterone/Epitestosterone ratio of 18.3 (A sample).

10.2.8 Accordingly, the Laboratory carried out an adverse analytical finding with the GC/C/IRMS analysis. This analysis showed that exogenous testosterone was present.

10.2.9 The counter-analysis performed on the B sample with GC/C/IRMS confirmed the A sample's results.

10.2.10 The Panel is of the opinion that the Laboratory complied with the procedures set by the UCI Anti-Doping Rules and provided two results that showed that a prohibited substance was found in the Respondent's urine and such substance was of exogenous origin.

10.2.11 With regard to the argument of Mr Bakker concerning the lack of complementary research, the Panel notes that the Laboratory carried out the GC/C/IRMS analysis that shall be considered as the complementary research. For this reason, this argument has to be rejected.

10.2.12 With regard to the contention that intense exercise can cause an important variation of the level of endogenous testosterone, the Panel relies on the GC/C/IRMS analysis that established that the testosterone found in the Mr Bakker's urine was of exogenous origin. This contention is rejected.

10.2.13 The Panel comes to the conclusion that the Respondents failed to rebut the presumption set by article 16 of the UCI Anti-Doping rules.

10.2.14 Mr Bakker has therefore committed a violation of article 15 of the Anti-Doping Rules.

11. Sanction

11.1 The violation is now established. The question is what sanction shall be imposed on the Rider.

11.2 According to art. 261 of the Anti-Doping Rules the period of ineligibility imposed for the first violation of art. 15.1 shall be of two years.

11.3 The UCI Rules provides for either elimination or reduction of the period of ineligibility based on exceptional circumstances:

- According to art. 264, if the rider establishes that he bears no fault or negligence for the violation, the period of ineligibility shall be eliminated.
- According to art. 265, if the rider establishes that he bears no significant fault or negligence, then the period of ineligibility may be reduced, but the reduced period of

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ineligibility may not be less than one-half of the minimum period of ineligibility otherwise applicable.

11.4 The Panel considers that art. 265 (no significant fault or negligence) is not applicable to Mr Bakker for the following reasons:

- According to article 15.1, Mr Bakker is responsible for the presence of a prohibited substance in his bodily specimen.
- Mr Bakker is aware of doping in sport.
- He ingested food supplements that might have contained hormones despite the fact that many warnings in relation to these food supplements were made.

11.5 According to the UCI Anti-Doping rules, the sanctions available are either two years (no exceptional circumstances), one year to two years (no significant fault or negligence), or no sanction at all (no fault or negligence).

11.6 The public interest that is sought by article 15.1 is the fight against doping in sports:

"It is each Rider's personal duty to ensure that no prohibited substance enters his body."

11.7 In the case at hand, the Appellant failed to abide by this duty. The Panel is of the opinion that the two year period of ineligibility appears to be appropriate to the seriousness of the infringement.

11.8 According to art. 275 of the Anti-Doping Rules, the period of ineligibility shall start on the date of the hearing. Therefore the period will start on 2 February 2006.

11.9 Pursuant to art. 256 the Anti-Doping Rules, a violation of the Anti-Doping Rules in connection with an in-competition test leads automatically to the disqualification of the individual result obtained in that competition. Accordingly, Mr Bakker is disqualified from the "*Vuelta Internacional a Valladolid 2005*".

11.10 Pursuant to art. 274, all other competitive results obtained from the date of a positive sample was collected to the commencement of any ineligibility period shall be disqualified. Accordingly, Mr Bakker is disqualified from any other race in which he competed between 26 March 2005 and 2 February 2006.

12. Jurisdiction on Costs

12.1 Pursuant to art. R65.4 of the Code, the proceedings related to disciplinary cases of an international nature ruled in appeal shall be free. The fees and the costs of the arbitrators are borne by the CAS.

12.2 The award is therefore pronounced without costs, except for the CAS Court Office fee of CHF 500 which is retained by the CAS.

12.3 According to art. R65.3, the cost of the parties shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall

share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.

12.4 In the present case, the appeal is upheld. The decision of the KNWU is annulled.

12.5 The Appellant was successful in this procedure. The first Respondent appeared as cooperative and travelled, with his lawyer, at his own expense to Lausanne. The second Respondent did not attend and provided very little explanation in relation to the grounds of its decision.

12.6 Accordingly, KNWU shall contribute to the amount of CHF 2000 to the legal fees and other expenses incurred by UCI in connection with these proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Union Cycliste Internationale is upheld.

2. The decision of the Koninklijke Nederlandsche Wielren Unie's Anti-Doping Commission dated 1 July 2005 is annulled.

3. Mr Erwin Bakker is disqualified from the "Vuelta Internacional a Valladolid 2005" and any other race in which he competed between 26 March 2005 and 2 February 2006.

4. Mr Erwin Bakker shall be declared incligible for competition for two years, commencing on 2 February 2006.

5. The award is rendered without costs, except for the Court Office fee of CHF 500 which is retained by the CAS.

6. Koninklijke Nederlandsche Wielren Unie shall contribute the amount of CHF 2000 to the legal fees and other expenses incurred by Union Cyclisto Internationale in connection with the proceedings.

Done in Lausanne, 20 April 2006

THE COURT OF ARBITRATION FOR SPORT

Mr Ercus Stewart
President of the Panel

TAB 20



Tribunal Arbitral du Sport
Court of Arbitration for Sport

TAS 98/192 UCI v/Skelde

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. John **Faylor**, Attorney at law, Frankfurt, Germany

Arbitrators: Mr. Olivier **Carrard**, Attorney at law, Geneva, Switzerland
Mr. Guido **De Croock**, Judge, Aalst-Moorsel, Belgium

between

UNION CYCLISTE INTERNATIONALE (UCI), Lausanne, Switzerland
represented by Mr. Philippe Verbiest, attorney at law in Leuven, Belgium

and

Mr. Michael SKELDE, Horsens, Denmark

and

DANMARKS CYKLE UNION, Brondby, Denmark

and

DANMARKS IDRAETS-FORBUND, Brondby, Denmark

* * * * * * * * * * *

I.
The Parties

1. The International Cycling Union (hereinafter "UCI") is an international federation of national cycling associations which is recognized by the International Olympic Committee. UCI is governed by its constitution and regulations, among them the "Cycling Regulations" and the "Antidoping Examination Regulations", the latter being most recently amended after approval of the UCI Management Committee on November 15th, 1997. The "Antidoping Examination Regulations" are hereinafter referred to as the "UCI AER".

2. Mr. Michael Skelde is a Danish citizen and a cyclist of the elite category. He is the holder of a rider's license issued by the Danmarks Cykle Union.

3. Danmarks Cykle Union (hereinafter "DCU") is the Danish national cycling federation which is a member of both the International Cycling Union and the National Olympic Committee of Denmark. The latter recognizes the DCU as the exclusive federation for the sport of cycling in Denmark. By virtue of its affiliation with the UCI, it has subscribed to the "Cycling Regulations" and the "Antidoping Examination Regulations of the UCI".

4. Danmarks Idraets-Forbund is the Danish National Olympic Committee (hereinafter the "Danish NOC") whose membership consists of one national sports federation, associate federation, sports organization or service beneficiary organization for each Olympic sport in Denmark. Like the UCI, it, also, is recognized by the IOC. The Danish NOC is governed by its Statutes on the basis of which it has promulgated its own Doping Control Regulations. By virtue of Art. 6, para 3.1 of the Statutes of the Danish NOC, the DCU must submit to doping control conducted by the NOC's Doping Control Committee on the basis of its Doping Control Regulations.

II.
Statement of Facts

1. On August 7th, 1997, Respondent and Appellant, Mr. Skelde, participated in the Tour of Denmark ("Post Danmark Rundt"), an international cycling event on the UCI's International Calendar for elite riders. After the competition, Mr. Skelde was required to submit to a doping test pursuant to the rules set forth in the UCI's AER. Upon analysis of the A-Sample on August 7th, 1997, the Doping Analytical Section of the Rigshospitalet in Copenhagen reported to the UCI Antidoping Commission in Lausanne

on August 18th, 1997 that a Testosterone/Epitestosterone Ratio (T/E Ratio) of 8.2 was identified in the urine specimen. After submission of additional data by the Rigshospitalet on August 18th, 1997 regarding the concentrations of prohibited substances in the specimen, the UCI Antidoping Commission, acting in accordance with Article 59 of the UCI AER, notified the DCU per letter of August 21st, 1997 that Mr. Skelde tested positive. The UCI Antidoping Commission pointed out that in light of the excessive T/E Ratio, Mr. Skelde must be given the opportunity to undergo further endocrinological examination in a laboratory to be chosen by the UCI in order "to ascertain whether this high ratio is due to a physiological or pathological condition." This procedure accords with the rules set down in the UCI's List of Categories of Doping Substances and Methods (List Nr. 1/97 of the UCI). The UCI stated in this letter that

> *"Should Mr. Skelde not wish to avail himself of this right, you will have to initiate the procedure provided for in Arts. 60 to 65 of the same Regulations. **We would remind you that, under the said articles, you have to keep us informed of all steps you take by sending us copies. Moreover, we draw your attention to the fact that - according to Art. 82, §3 - if there is no final decision within the deadlines (see Art. 82, § 1), the defendant shall be automatically suspended until the date of the decision, unless an extension of the period is granted by the Antidoping Commission.**"*

(Bold lettering contained in original letter of notification)

2. The DCU confirmed receipt of this notification on August 29th, 1997 and reported that it was "in contact" with Mr. Skelde and that he had chosen to submit to an endocrinological examination. It informed the UCI Antidoping Commission that the examination would take place on September 29th, 1997 and be repeated two months later. The DCU stated explicitly in this letter that

> *". . . the results from these tests will form the basis of the judgment in Denmark. The test results will of course be at your disposal, should you wish so. If the UCI will recognize this method as the basis of judgment in the matter together with a later laboratory test, i.e. after three months, we ask you kindly to inform us about it."*

3. The DCU's reference to being "in contact" with Mr. Skelde refers to the letter of the Doping Control Commission of the Danish NOC to Mr. Skelde of August 26th, 1998. Acting at the request of the DCU and on the basis of the UCI's August 21st letter, the

Danish NOC notified Mr. Skelde that the sample taken on August 7th, 1997 showed a raised T/E Ratio of 8.2. The Danish NOC's letter proceeds to state to Mr. Skelde that before the sample can be declared positive or negative additional testing will be required. This letter to Mr. Skelde from the Danish NOC makes no mention of the procedures of the UCI Antidoping Examination Regulations, nor does it inform the rider of his rights to request an endocrinological examination as explicitly described in the UCI notification letter of August 21st, 1997 to the DCU. It points out to Mr. Skelde that "the rules on the T/E ratio are described in "Information on Doping", page 4 and provide:

> Er forholdet mellem testosteron og epitestosteron (T/E-ratio) ved urinalysen mere end 6 til 1, er der tale om en overtraedelse af regulativet, med mindre der er bevis for, at der er tale orn et fysiologisk eller patologisk tilfaelde.
> Hvis T/E forholdet er större end 6, vil der blive foretaget yderligere efterforskning, för pröven erklaeres positiv.
>
> Vl beder dig derfor hurtigst muligt kontakte dopingkontroludvalgets laege Jens Ilers pá tif. 7589 1811, for at aftale tid til fornyet pröve."

(Unofficial Translation of the Panel)

> *If the ratio between testosterone and epitestosterone (T/E ratio) at urinalysis is more than 6 to 1, then there is a violation of the regulations, unless there is proof that the matter deals with a physiological or pathological case.*
> *If the T/E ratio is greater than 6, additional tests will be made before the sample is declared to be positive.*
>
> *We therefore ask you, as quickly as possible, to contact the Doping Control Commissions's Dr. Jens Elers, at telephone number 7589 1811, to discuss an appointment for a new test.*

The UCI was not in possession of this letter as of July 10th, 1998, the date of the Panel's hearing of this dispute. It was expressly requested by the Panel pursuant to its Order of July 10th, 1998.

4. In the report of its results of the endocrinological tests dated November 19th, 1997, the Deutsche Sporthochschule Köln, Institut für Biochemie, stated that

> *"Mr. Skelde does not have a naturally elevated T/E ratio. All steroid profile parameters of the athlete are within the population based reference ranges of*

male athletes. The T/E ratio of Code No. A047027 is both outside the individual reference range and the population based reference range for the T/E value. We recommend to give the sample A047027 positive for the application of an endogenous steroid. The GC/C/IRMS results are in accordance with the results obtained after an application of dehyroepiandrosterone (DHEA)."

(Bold type also contained in original of the report.)

5. The UCI Antidoping Commission informed the DCU on November 19th, 1997 of the results of the endocrinological examination conducted in Cologne and asked the DCU

> ". . . to continue the procedure according to Art. 62 and subsequent of the UCI Antidoping Examination Regulations in force. We would remind you that, under the said articles, you have to keep us informed of all steps you take by sending us copies."

Again, the UCI Antidoping Commission issued its instructions that, in accordance with Art. 82 Section 1 of the UCI AER, proceedings before the DCU's competent doping tribunal must be ended within one month of receipt of the notification of the positive result of the A-Sample and, in the event of the counter-analysis of the B-Sample, any extension of time required between the date of the rider's request for the "counter-analysis" and the date on which the laboratory issues the results of such "counter-analysis."

6. The DCU forwarded the UCI's letter of November 19th together with the examination report of the Cologne laboratory directly in a letter to Mr. Skelde dated November 20th, 1997. It did not first notify the Danish NOC of the results of this examination. The letter from the DCU to Mr. Skelde stated as follows:

> *"UCI anser derfor, at der er tale om en dopingsag og beder os handle i henhold til UCI's Dopingregulative.*
> *Brevet er i henhold til gaeldende regler afleveret til DIFs Dopingkontroludvalg. De vil pá et möde tirs. d. 25.11 tage stillig til, om de vil rejse en sag. I vurderingen heraf vil indgá de 4 pröver, laege Jens Ehlers har taget.*
>
> *Du skal nu göre fölgende:*
>
> *1) I henhold til UCIs Topingregulative skal du inden onsdag d. 26 november beslutte, om du önsker B-pröven analyserer - og hvis du önsker dette, skal*

du give DCU's kontor besked herom skriftligt senest onsdag morgen med morgenposten, da tudspunktet ellers er forpasset i UCI - se venligst vedlagte blanket til underskrift. Du har mulighed for selv at vaere til stede og tage en lesager med. Alle udgifter i. forbindelse med B-pröveanalysen i. Köbenhaven skal du selv afholde. Selve prövetagningen er dog gratis.

2)

(Unofficial Translation of the Panel)

UCI therefore considers this matter to be a doping matter and have asked us to act in accordance with UCI's Doping Statute. The letter has, in accordance with the applicable regulations, been delivered to DIF's Doping Control Commission. They will, at a meeting on Tuesday November 25, make a decision on whether they will commence proceedings. As part of their consideration, they will review the 4 tests taken by Dr. Jens Ehlers.

You must do the following:

1) In accordance with UCI's Doping Statute, you must, before Wednesday November 26, decide whether you want to have the B-sample analyzed -- and, if so, you must advise DCU's office of your decision in writing, Wednesday morning at the latest, by the morning mail, otherwise the opportunity will have passed with respect to the UCI -- kindly note the enclosed signature form. You have the possibility of coming there yourself in person and may take one companion with you. You are required to pay all expenses in connection with the B-sample analysis in Copenhagen. The actual taking of the sample is free.

2)

The submission of the above correspondence was requested by the Panel by its Order of July 10th, 1998.

7. The DCU informed the UCI Antidoping Commission in its letter of November 24th, 1997 that Mr. Skelde would have until November 26th to request analysis of the B-sample and that the case "has been handed over to the NOC Antidoping Commission for further action."

8. In a further letter statement from the DCU dated November 27th, 1997, the UCI Antidoping Commission was instructed that Mr. Skelde had requested the analysis of the B-sample and that this analysis would take place on Monday, December 1st, 1997 at the Dopinganalysesektionen, Rigshospitaet, Copenhagen. The results of the analysis were notified directly by the Rigshospitalet to the UCI Antidoping Commission by letter dated December 3rd, 1997. The results were positive.

9. The UCI Antidoping Commission notified the DCU of the positive result of the counter-analysis of the B-sample by letter of December 3rd, 1997 and confirmed "that it is objectively an infraction to the UCI Antidoping Examination Regulations (T/E 7.9)." After stating that the result of the endocrinological study carried out at the Institut für Biochemie in Cologne was positive as well, the letter asked the DCU "to implement proceedings according to Arts. 69 and the following of the UCI Antidoping Examination Regulations." The letter again gives notice that

> *"... according to the said articles, you have to keep us informed of all measures you take by sending us copies thereof."*

The letter also repeats the reference to Art. 82 Section 1 regarding the deadlines for ending the proceedings before the competent tribunal of the National Federation and the requirement for suspension if no final decision is made within these deadlines unless an extension of the period is granted by the Antidoping Commission.

10. By letter dated January 27th, 1998, the DCU informed the UCI that, on January 19th, 1998, a verdict had been rendered by the Doping Tribunal of the Danish NOC in the Skelde matter. The Doping Tribunal sentenced Mr. Skelde to a two year suspension commencing December 13th, 1997. The Tribunal held that both the A- and B-Samples had been identified as positive and that the Institut für Biochemie in Cologne had concluded that the T/E Ratio found in the samples was not naturally increased. With repect to the sentence, the Tribunal of the Danish NOC held:

> *"... the Doping Tribunal is aware of the divergence between the rules of the UCI and the rules of the NOC and Sports Confederation of Denmark and of the fact that it is the policy of the NOC and Sports Confederation of Denmark not to protest, should the UCI in the following decide to fix a penalty for international competitions in accordance with UCI rules. In conformity with Art. 6, Par. 1 of the Doping Control Regulations, the Doping Tribunal finds that the penalty shall*

be two years suspension from participation in all sports under the National Olympic Committee and Sports Confederation of Denmark."

11. In its Statement of Appeal dated February 27, 1998, received by the CAS on March 3rd, 1998, the UCI pleaded that the two year sanction imposed upon Mr. Skelde by the January 19th decision exceeded the maximum sanctions prescribed by the applicable UCI Antidoping Examination Regulations and petitioned the CAS to impose the sanctions prescribed in Articles 90 through 94 of the UCI AER. In addition, the UCI challenged the fact that the decision of the Doping Tribunal did not pose a disqualification from the Tour of Denmark or a fine. The Appeal cited Articles 84 to 89 of the UCI AER as the basis for jurisdiction of the CAS and, alternatively ("by way of precaution"), Article 135.

UCI's statement of appeal was served upon Mr. Skelde, the DCU and the Danish NOC by letter of March 3rd, 1998.

12. In a brief dated March 9th, 1998, received by the CAS on March 13th, legal counsel for the UCI provided arguments in support of the appeal. This brief was forwarded to Mr. Skelde, the DCU and the Danish NOC immediately upon receipt.

The UCI stated in its March 9, 1998 brief that it accepted DCU's appointment of the NOC's Doping Tribunal as,

". . . its competent body, which appointment apparently is based on DCU's perception that they are obliged under Danish NOC rules to refer doping matters to the said Doping Tribunal."

Counsel for the UCI stated further that the appeal from the Doping Tribunal's decision may not be taken before any other body (appeal or higher court) within that same federation, unless the legislation of the country so requires. Citing Art. 84 Section 2, counsel for the UCI concluded that no other recourse than the appeal before the CAS shall be permitted. UCI counsel stated as follows:

"UCI accepts that the suspension starts from 13 December, 1997 from which date Mr. Skelde has been suspended on the basis of Art. 8 of the "Doping Control Regulations" of the NOC and Sports Confederation of Denmark, on the condition that it is shown by the defendants that such suspension has been effectively served by Mr. Skelde in a period of normal competition activity (see art. 94 AER). It should be noted in this respect that according to AER a rider cannot be suspended

before his case is brought to trial and judgment is pronounced and that a retrospective suspension is not possible - see article 94 AER".

UCI's counsel cited the fact that in the case of a divergence between the rules of an international federation such as the UCI and the rules of a national body, the former prevail. He cited, in this regard, the CAS Advisory Opinion of January 5, 1995 r.a. CONI/UCI and the CAS Decision no. 97/169 regarding Menegotto/FCI.

In further support of UCI's jurisdiction in the matter, counsel for the UCI stated as follows:

"In addition, an agreement was made between UCI, DCU and Denmark's NOC that the Doping Tribunal would act as DCU's competent body for handling doping cases according to Art. 71 AER and that the Doping Tribunal would apply AER.

The reasons for such agreement was that Denmark's NOC did not allow its member federations to sanction doping offences themselves (which is confirmed in the Doping Tribunal's fax to UCI of 5 December 1997). UCI did not agree with such a position, but in order to avoid more difficulties UCI accepted the said agreement as a practical solution which, in addition, was not in contradiction with AER.

It has become clear now that, in contradiction with the agreement, Denmark's NOC refuses to apply AER."

Lastly, UCI takes the position that the position expressed by the Danish NOC stands in conflict with the Olympic Charter.

"Paragraph 2.6 of Rule 31 stipulates that it is the mission and the role of the NOC's to fight against the use of substances and procedures prohibited by the IOC or the IF's, in particular by approaching the competent authorities of their country so that all medical controls may be performed in optimum conditions. The role of the NOC's regarding doping is not in establishing or ensuring the application of doping rules, but in prevention and in creation of the conditions for an optimum application of the doping rules issued by the IOC and the international federations. Also, Rule 33 of the Olympic Charter stipulates that to be recognized by an NOC, a national federation must, inter alia, conduct its

activities in compliance with both the Olympic Charter and the rules of its IF. Therefore, an NOC must repect itself the rules of the international federation and cannot forbid a national federation to apply the rules of its international federation."

Finally, counsel for the UCI cites the alternative application of Art. 135 of the UCI AER as a basis for the jurisdiction of the CAS.

"An appeal may be brought before CAS against the decision of the Doping Tribunal if it acted as the competent body under AER..

Now that it appears that the Doping Tribunal did not want to apply AER, UCI is also entitled to ask CAS for a final decision on the grounds of Art. 135 AER, as DCU has taken no decision and will not take a decision as long as Danmarks Idraets-Forbund forbids DCU to do so and CAS will not have confirmed that AER has to be applied in all parts."

13. In a letter from the Doping Control Commission of the Danish NOC to the UCI dated March 10th, 1998 and forwarded to the CAS on March 18th, 1998, the Doping Control Commission stated that Mr. Skelde had appealed the sentence of the Doping Tribunal of the Danish NOC to the Commission of Appeals and Arbitration of the Danish NOC. It noted that, because the appeal to the CAS by the UCI was not based on a final sentence of the Danish NOC's Doping Tribunal, the case pending before the CAS should be postponed until the result of the appeals case in Denmark is known, probably in April 1998. The letter refers to a meeting which would take place between the UCI and the Danish NOC to seek a solution "which respects both organisations' doping regulations, but avoids that every doping case involving Danish cyclists must also be heard before the CAS."

14. In an undated letter received by the CAS on March 16th, 1998, Mr. Skelde stated that he "was not quite sure whether [he] understood the situation totally." He alleged that he could not understand how he could have used an illegal substance, pointing out that DHEA did not stand in any published doping list in Denmark in the year 1997. He stated that the raised T/E Ratio had a "natural reason".

15. In response to the inquiry posed by the CAS to the UCI concerning the postponement of the proceedings requested by the Danish NOC, counsel for the UCI stated on March 23rd, 1998 to the CAS that UCI agreed to such postponement "until further notice from

me", pointing out, however, that this request had nothing to do with the appeal in Denmark, but with a meeting which was scheduled between UCI and the Danish NOC at which time the conflict between the UCI rules and the NOC rules would be discussed.

16. Having obtained the agreement of all parties concerned in the dispute, the CAS ordered the postponement to commence on March 30th, 1998.

17. On May 4th, 1998, the appeal filed by Mr. Skelde was heard before the Commission for Appeals and Arbitration of the Danish NOC. The two year sentence imposed by the Doping Tribunal on January 19th, 1998 was upheld, but the commencing date of the suspension was moved back by one day to December 12th, 1997.

18. In his letter to the CAS dated May 11th, 1997, counsel for the UCI requested that the proceedings before the CAS be resumed.

19. In his brief dated May 13th, 1998, received by the CAS on May 18th, 1998, Mr. Skelde requested that his case "be taken up". He pleaded that the penalty imposed by the Doping Tribunal is longer than the sanction prescribed by the UCI and that for this reason it is unacceptable. He pleaded: "A possible judgment in CAS ought to be valid for all bicycle events within the framework of the UCI -- worldwide." In his defense, Mr. Skelde cited irregularities in the labelling of the sample bottles which implied that the bottle codes were changed, that the T/E corrected ratio of 6.0 established in the Institut für Biochemie was not above the legal limit, that he did not take a banned substance, that especially his loss of weight and rest had caused his "special situation" and that DHEA had been sold until then in Denmark as a legal substance.

20. In its letter of May 26, 1998, the CAS informed all parties that upon request of the UCI the proceedings would "now resume". Mr. Skelde, the DCU and the Danish NOC were called upon to submit by June 18th, 1998 an answer to the appeal statement.

21. By letter of June 22, 1998, the parties to the proceedings were informed that a hearing before the Panel would take place in Lausanne on July 10th, 1998. In a letter dated July 2nd, 1998, the Danish NOC informed the CAS that the Danish NOC would not attend the hearing and that

> *"It should be stressed that as far as the NOC and Sports Confederation of Denmark is concerned, this case is between UCI and Mr. Skelde, and the NOC does not consider itself part of this case."*

22. In a letter dated July 6th, 1998 to the CAS, the DCU stated that it would not be present as the scheduled hearing. It cited the fact that Mr. Skelde had been suspended on the basis of "national rules and not the UCI antidoping regulations". The DCU pleaded that it is "forced to let all doping cases be handled by the Doping Tribunal of NOK" and that, for this reason, it did not consider itself a party to this dispute. The letter proceeds:

> *"We, the Danish Cycling Federation, are looking forward to a verdict from CAS that will solve the problem between Danish NOC and UCI. A verdict that means that the Danish Cycling Federation in the future cannot be held hostage between the Danish NOC and the UCI."*

23. On July 10th, 1998, the Panel held a hearing to which all parties were invited. The UCI was represented by its legal counsel, Mr. Philippe Verbiest, and Mrs. Anne-Laure Masson, Medical and Anti-Doping Coordinator. Neither Mr. Skelde nor the DCU nor the Danish NOC appeared at this hearing.

When questioned by the Panel during the hearing, legal counsel for the UCI stated that the DCU had always told the UCI that it had no jurisdiction to deal with doping cases and that it had to refer these cases to the Danish NOC for a decision. This question of jurisdiction in Denmark had been discussed with all parties concerned and that the Danish NOC had accepted application of the UCI's AER instead of their own regulations, but that the Danish NOC did not respect this agreement.

Upon further questioning by the Panel regarding information provided by the DCU and the Danish NOC to the UCI, legal counsel for the UCI confirmed that the UCI had received only a copy of the decision made by the Danish NOC. No other information relating to the proceedings had been submitted to the UCI. The UCI could not intervene properly during the proceedings because it was not informed about the schedule of the procedure. At the time this procedure started, stated the UCI's legal counsel, the UCI was confident that the UCI's AER would be applied by the competent tribunal in Denmark.

24. In response to the interrogatories raised by the Panel, the Danish NOC reiterated its position stated in its letter of July 2nd, 1998 that it considers itself "not party to the case UCI v/Skelde."

"As a national sports federation affiliated to Danmarks Idraets-Forbund, Danmarks Cykle Union must observe DIF's rules and regulations, including suspension of athletes in connection with doping sentences. If Danmarks Cykle Union fails to comply with decisions by Danmarks Idraets-Forbund it may result in Danmarks Cykle/ Union's exclusion from Danmarks Idraets-Forbund."

In this response, the Danish NOC further confirmed that "Danish law does not impose rules or requirements in terms of procedure and sanctions which would prevent the application of the UCI's Anti-Doping Examination Regulations."

25. In its response to the interrogatives raised by the Panel's July 10th, 1998 order, the DCU has confirmed that

"The rider has been informed of the development in his case by copies of all correspondence between DCU/UCI/DIF/CAS. All copies have been sent immediately after we received them at the DCU office.

III.
In Law

A. Procedural Issues

1. Admissibility of the Appeal, the Responses and the Counter-Appeal

UCI's appeal of the January 19th, 1998 decision of the Doping Tribunal of the Danish NOC was filed within the applicable deadlines. Rule 49 of the Code of Sports-Related Arbitration ("**CSA**") sets the time limit for appeal at 21 days from the communication of the decision which is appealed, provided the statutes or regulations of the federation, association or sports body concerned do not set a different limit. Pursuant to Article 86 of the UCI's AER, the statement of appeal must be lodged with the CAS within 1 month from receipt of the decision by the Appellant. The UCI received notice of the Doping Tribunal's decision of January 19th, 1998 [after January 27th, 1998]. The UCI's Statement of Appeal dated February 27, 1998 was received by the CAS per registered mail on March 3rd, 1998. Accordingly, the 21-day limit set forth in Rule 49 CSA will not apply.

UCI's Appeal Brief dated March 9th, 1998 was received within the 10 day period described in Rule 51 on March 10, 1998. Both Mr. Skelde's response and counter-appeal

and his appointment of an Arbitrator were received on March 18th, 1998, both declarations being made within the time limits set forth in Rules 53 (appointment of arbitrators) and 55 (answer of respondent CSA).

Neither DCU nor the NOC filed statements which could be construed as responses within the meaning of Rules 53 and 55 CSA. To the contrary, their letters to the CAS dated July 6th, 1998 and July 2nd, 1998, respectively, indicate that they do not consider themselves parties to this arbitration.

After review of the facts of this case and the applicable provisions of the Olympic Charter and the AER of the UCI, the Panel has concluded that the participation of the DCU and the Danish NOC as parties to these proceedings is not required. On the grounds further discussed below, the Panel holds that the the Doping Tribunal of the Danish NOC acted only as the "competent body" of the DCU for adjudicating doping offences.The jurisdiction to be exercised in this case was the jurisdiction of the UCI. Because the DCU was exercising the (original) jurisdiction of the UCI and because the DCU delegated prosecutorial and judicial authority to the Doping Tribunal of the Danish NOC with the consent of the UCI, all actions, measures and decisions of the Danish NOC's Doping Control Commission and the Doping Tribunal must be attributed to the UCI. Accordingly, the Panel deems that only the UCI and Mr. Skelde may be considered parties to this dispute. For this reason, the Danish NOK's withdrawal from the proceedings as declared in its July 2nd, 1998 brief to the CAS, despite its its earlier approval of Mr. Skelde's chosen arbitrator, and its recommendation to suspend the proceedings raised in its March 10th, 1998 brief to the CAS have no dispositive effect upon these proceedings.

The Panel has determined that Mr. Skelde's brief of March 15th, 1998 to the CAS meets the requirements of Rule 53 CSA. He received the UCI Appeal Brief under cover letter of the CAS dated March 13th, 1998. Because the proceedings were suspended by Order of the CAS of March 30th, 1998, the 20-day time limit for filing his answer to the Appeal Brief pursuant to Rule 55 CSA had not yet expired. Mr. Skelde's May 13th, 1998 brief to the CAS, which ended the suspension, constituted both a response coupled with the filing of his own appeal for a reduced sentence.

2. Jurisdiction

The jurisdiciton of the CAS is founded on Article 84 AER. Both the UCI and Mr. Skelde have the right pursuant to this provision to enter an appeal against the January 19th,

1998 decision of the Doping Tribunal of the Danish NOC by requesting arbitration before the CAS. Paragraph 2 of this Article 84 clearly and unequivocally states that "no other recourse shall be permitted." The Commission of Appeal and Arbitration of the Danish NOC had no jurisdiction to hear the appeal filed by Mr. Skelde. Moreover, Article 81 AER establishes that

> *"The decision, once taken by the competent body of the National Federation of the rider or the license-holder concerned, may not be appealed before any other body (appeal or higher court) within that same Federation unless the legislation of the country in question so requires."*

The Danish NOC confirmed in its July 20th, 1998 response to the Panel's corresponding interrogatory that Danish law does not impose rules or requirements in terms of procedure and sanctions which would prevent the application of the UCI's AER.

The Doping Tribunal of the Danish NOC, which acted as the "competent body" of the DCU in the adjudication of the doping violation, erred, however, in its application of the Doping Control Regulations, in particular, with regard to the sanctions imposed.

Article 4 AER states that "these Regulations and these alone" shall apply to international competition. The AER is "binding upon all National Federations which may neither deviate therefrom nor add thereto." Accordingly, the AER was binding upon the DCU in its handling of doping cases. As counsel for the UCI stated during the hearing on July 10th, 1998, the UCI has chosen not to adjudicate doping violations within the framework of its own organization, i.e., by instituting its own tribunal and trying doping cases itself, but has delegated its jurisdiction to the national federations for reasons compelled by the proximity of the national tribunal to the athlete, language differences and costs.

Pursuant to the rules set forth in Articles 69 et seq. AER, therefore, the DCU is charged with the investigation, prosecution and adjudication of international doping violations. It utilizes its competent bodies in the exercise of UCI's jurisdiction. The only exceptions hereto concern races on the National Calendar of the respective national federation when national regulations are permitted to be applied (see Preliminary Provisions No. 1 of the 1996 UCI Cycling Regulations). The Tour of Denmark was, however, undisputedly a race on the International Calendar of the UCI.

On the basis of the UCI's own admissions, it has recognised and accepted that the DCU has appointed the Doping Tribunal of the Danish NOC as its (the DCU's) "component

body". The UCI has provisionally agreed, pending further negotiations with the Danish NOC, to accept this appointment in recognition that the Danish NOC has mandated under its Doping Control Regulations that

> *"no member federation is allowed under these regulations to conduct doping cases on its own, regardless of the regulations of the International Federation in question." (see Letter of the Danish NOC dated December 5th, 1997 to UCI)*

The UCI's provisional acceptance of the appointment was made subject, however, to the condition that the Doping Tribunal of the Danish NOC applies the UCI's AER. This fact is clearly evidenced in the letter issued by Werner Göhner as President of the Antidoping Commission of the UCI dated December 12th, 1995. Despite the evidence submitted by the UCI in the form of the correspondence passed between the UCI, the DCU and the Danish NOC in November/December 1995, the Panel is forced to conclude that no agreement ever existed between them regarding the application of the UCI's AER. The existence of this hidden dissent was first exposed in the grounds of the Doping Tribunal's decision that, in light of the divergence between the rules of the UCI and the Danish NOC, it is the policy of the latter "not to protest" if the UCI, subsequent to the national decision, wishes to set its own penalty for violations of UCI rules in international competition.

Accordingly, the Danish NOC appears to assume that two separate and independent jurisdictions exist with regard to international doping cases: (1) the jurisdiction of the UCI for international sporting events and (2) the exclusive jurisdiction of the Danish NOC with regard to sanctions to be imposed upon Danish athletes, regardless of whether the event in question is on the International Calendar of the UCI or is exclusively a Danish national event.

The Panel wishes to establish, however, that the parallel jurisdiction of the kind propagated by the Doping Tribunal and in the pronouncements of the Danish NOC does not take into account the following considerations:

If the Danish NOC agrees to respect the jurisdiction of the UCI with regard to international sporting events, but insists, at the same time, upon the hearing of all doping cases involving Danish athletes before its own tribunals under exclusive application of its own Doping Control Regulations (see Art. 9 para. 3 of its Regulations amended as of December 1st, 1996), it inexorably deprives the UCI of any jurisdiction whatsoever to

enforce its Antidoping Examination Regulations with regard to Danish athletes competing in international sporting events inside and outside of Denmark.

The issue which the Danish NOC has chosen to ignore is the following: How are violations of the international doping provisions of the International Federations to be prosecuted and adjudicated in Denmark, if the Danish NOC in the exercise of its jurisdictional monopoly denies the DCU or any other National Federation the opportunity to decide international doping violations within its own competent bodies on the basis of international rules and regulations? If the Danish NOC states that its jurisdiction is "only national", but refuses at the same to apply the international rules of the UCI's AER in the competent bodies to which the DCU has legitimately -- and with the consent of the UCI -- delegated its authority, the Panel is forced to conclude that doping violations of Danish athletes participating in international competition will remain unenforced. This cannot be the intention or the policy of the Danish NOC.

In this regard, the Panel need not remind the Danish NOC of its rights and obligations and those of the international federations pursuant to the Olympic Charter. Rule 30 of the Charter assigns the international federations the responsibility to "establish and enforce, in accordance with the Olympic spirit, the rules concerning the practice of their respective sports and to ensure their application." The mission of the NOC's, on the other hand, is to "fight against the use of substances and procedures prohibited by the IOC or the IFs." This mission is focused upon political actions vis-á-vis the competent authorities of their respective countries. The Danish NOC is bound in Rule 33 to "conduct its activities in compliance with both the Olympic Charter and the rules of its IF." In the Advisory Opinion rendered by the CAS in the case CAS 94/128 UCI/CONI, the Panel held that

> *". . . the IFs enjoy the principal competence with regard to the fight against doping. The natural consequence of this is that their rules prevail over those which an NOC or national sports authority (for example an NF) might have enacted."*

Because the Panel does not wish to conclude that it has become the policy of the Danish NOC to hinder the enforcement of international antidoping regulations in Denmark, it concludes that the Doping Tribunal of the Danish NOC has erred in not applying the AER in the case at hand. This conclusion does not stand in conflict with the Doping Control Regulations of the Danish NOC. Art. 5 of the Regulations states that

"Doping control shall be conducted in accordance with the regulations of the International Olympic Committee, the member organization's international body and the rules of the National Olympic Committee and Sports Confederation of Denmark.

The Panel has also concluded that the UCI acted in good faith in believing that the Danish NOC would apply the UCI's AER, although the Panel has certain reservations with regard to the diligence with which the UCI Antidoping Commission exercised its interventional prerogatives as set forth in the AER. UCI had authority to intervene in the proceedings, either in writing or through its presence at the hearing, and to demand the imposition of a penalty pursuant to Art. 90 (1) AER. It did not exercise these rights. Clearly, it failed to even give an opinion in the case, although Article 73 para. 1 mandates that "the hearing may not take place unless the UCI has stated its opinion or has in writing waived its right to do so."

The proceedings against Mr. Skelde were initiated by the UCI in accordance with Articles 58 et seq. of the AER. Its notification to the DCU of August 21st, 1997 conformed to the requirements of Article 59 para. 2 AER. The UCI also informed the DCU in this letter and in its subsequent letter of November 19th, 1997 that it must adhere to the procedures provided in Article 62 through 65. Moreover, it reminded the DCU in both letters that, pursuant to the said Articles, UCI was to be kept informed "of all steps you take by sending us copies". Despite these instructions and the clear references to the DCU's informational obligations, the UCI's failure to request information regarding the initial scheduling and the course of proceedings cannot be overlooked. Had the Antidoping Commission of the UCI diligently and circumspectively requested information, it may have learned far before the decision of the Doping Tribunal that the AER were not being applied.

If, therefore, the UCI was caught by surprise upon learning in the January 19th, 1998 decision of the Doping Tribunal that only the sanctions contained in the Doping Control Regulations of the Danish NOC were applied to the total exclusion of the UCI'S AER, the Panel is forced to attribute a certain portion of fault to the Appellant themselves. In making this judgment, however, the Panel acknowledges that the UCI, upon learning the tenor of the Tribunal's decision, acted correctly in immediately appealing the decision to the CAS and not allowing the case to be heard on appeal by Mr. Skelde before the Commission of Appeals. Counsel for the UCI was careful to establish in his March 23rd, 1998 letter to the CAS, that his willingness to accept the suspension of the proceedings

had "nothing to do with the appeal in Denmark, but with a meeting scheduled between the UCI and the Danish NOC in order to resolve jurisdictional issues."

It is also clear to the Panel that the DCU attempted and failed to reconcile the the short-sighted and intransigent position of the Danish NOC with regard to its claim of exclusive jurisdiction in doping matters, on the one hand, with the UCI'S misplaced faith and trust that doping violations brought before the Doping Tribunal would be decided on the basis of the AER, on the other. The DCU's handling of the flow of information regarding the course of the proceedings demonstrates its dilemma impressively. The DCU has indeed been placed in a position which it cannot resolve itself and its reference to being held "hostage" between the Danish NOC and the UCI is not without grounds. All parties acting in this dispute must realize, however, that the real victim of this jurisdictional impasse is not the DCU, but rather the athlete, Mr. Skelde.

In the August 26th, 1997 notification of the Danish NOC to Mr. Skelde that his A-sample had tested positive, a notification initiated by UCI and passed through the DCU to the Danish NOC's Antidoping Commission, no mention is made at all of the rules and regulations which would apply in adjudicating his case. Even the instructions given to him regarding his rights in light of the excessive T/E Ratio make no reference to the rules which govern. The Doping Control Commission of the Danish NOC cites merely the "Information on Doping" page 4, without even identifying whose "Information" is meant. No explicit reference is made to the rules which will apply, neither to the Doping Control Regulations of the Danish NOC nor to the AER of the UCI. DCU's failure to furnish the UCI a copy of this letter allows the inference to be drawn that the DCU did not wish to make the UCI aware that its rules would not be applied. Importantly, however, the instructions given to Mr. Skelde regarding his rights with regard to the endocrinological examination were incorrect and certainly did not conform to the AER. These documents show clearly that the Danish NOC never intended to apply the AER. This letter was never sent in copy to the UCI. The UCI learned of its content only after the copy was requested by the Panel in its July 10th, 1998 Order.

The opposite occurred, however, with the DCU's letter to Mr. Skelde of November 20th, 1998. This letter was sent directly by the DCU to Mr. Skelde. The defendant is placed on notice that, in light of the findings of the Cologne laboratory, the UCI considers the matter to be a doping matter and that it (the DCU) has been asked to act in accordance with UCI's doping statute. The letter further states that, "in accordance with UCI's doping statute, Mr. Skelde must decide whether to request an analysis of the B-sample."

This letter was sent in copy to the UCI in compliance with the information instructions given to the DCU by the UCI. Here, however, the DCU could assume that the express reference to the application of the AER would assure the UCI that its rules were being applied. The question posed, however, is how Mr. Skelde reacted to these instructions, in particular, in light of the conflicting reference to the Danish NOC's "Information on Doping" made in the August 26th notification letter.

This correspondence with Mr. Skelde -- with only a portion of it being received in copy by the UCI -- reflects the torturous dilemma in which the DCU found itself and clearly demonstrates the confusion which must have arisen in the eyes of Mr. Skelde.

After all of the above, the Panel has concluded that the jurisdiction of the CAS is based on Art. 84 UCI. The Doping Tribunal of the Danish NOC acted as the "competent body" of the DCU with the knowledge and consent of the UCI. The DCU, in turn, exercised the original jurisdiction of the UCI as prescribed by the applicable provisions of the AER. The UCI initiated the doping proceedings against Mr. Skelde in accordance with AER, informed the DCU regarding applicable deadlines and requested to be kept informed of all measures taken by the DCU in the proceedings. Its good faith reliance upon the DCU's representations is evidenced in the exchange of information between the UCI and the DCU, on the one hand, and the DCU/Danish NOC and Mr. Skelde, on the other. It is shown clearly in the UCI's timely filing of its appeal to the CAS in accordance with Art. 84 and its refusal to accept the jurisdiction of the Danish NOC with regard to Mr. Skelde's appeal to the Commission of Appeals of the Danish NOC.

B. The Merits

Pursuant to Art. 2 of the AER, the use of the pharmaceutical substances appearing on the List of Catagories of Doping Substances and Methods is prohibited. Mr. Skelde tested positive for the use of testosterone, which is on the List of Catagories which became effective as of 1 May 1997.

For endogenous steroids, a sample is deemed positive if the urine T/E ratio is above 6, unless this ratio is attributable to a physiological or pathological condition. In Mr. Skelde's case, the A-sample was found to have a T/E ratio of 8.2. The endocrinological examination determined that the ratio was not due to a natural physiological or pathological condition. Furthermore, the B-sample also yielded a positive result with a T/E ratio of 7.9. The Cologne laboratory recommended that the sample be declared

positive for the application of an endogenous steroid, stating that "the GC/IRMS results are in accordance with results obtained after an application of dehyroepiandrosterone (DHEA)." The Doping Tribunal found that a result of 6 from the laboratory which conducted the analysis of the B-sample was a "corrected ratio" figure, and accepted the recommendation of the laboratory that the sample be considered positive. The panel finds no grounds upon which the accuracy of these findings is subject to challenge.

Mr. Skelde points out that there was a correction of the bottle code number on the control form. However, he advances no other evidence in support of a charge that the sample was misplaced, tampered with, manipulated, switched, etc. It is the opinion of the Panel that the crossed-out code number in the appropriate box reflects a slip of the hand at the time the control form was filled out by the competent official. If this slip took place subsequent to Mr. Skelde's signature of the form, there is no record that Mr. Skelde raised an objection or initiated any inquiries at the analyzing laboratory to determine the origin of the changed code number, thus indicating that the change was done before his eyes at the time the control form was filled out. Therefore, the Panel concurs with the Doping Tribunal that "the fact that a figure has been corrected in a form...does not afford grounds for assuming that there has been a mistake with respect to the identity of samples."

Mr. Skelde claims that there could be natural reasons for the fluctuation in his T/E ratios. However, the endocrinological examination ruled out any physiological causes for the elevated ratios. Furthermore, a Gas-Chromatography/Combustion/Isotope Ratio Mass Spectrometry analysis was performed which confirmed the exogenous application of testosterone and dehydroepiandrosterone (DHEA). The contention by Mr. Skelde that DHEA was not on the list of forbidden substances in 1997 is not correct: it is indeed listed as dehydroepiandrosterone under the heading 1 at the bottom of the List of Catagories on page 2 among the androgenic anabolic steroids.

Mr. Skelde also claims that he may have ingested DHEA without his knowledge. Under Art. 2 of the AER, however, the participants in cycling races have the responsibility to ensure they do not "avail themselves of forbidden agents".

With regard to the reduction in the sentence imposed by the Doping Tribunal of the Danish NOC from two years to nine months commencing as of December 12, 1997, the Panel has taken into consideration the fact that the AER prescribes a maximum suspension of one year for the first offence as opposed to the maximum suspension of two years prescribed in the rules applied by the Danish NOC. It cannot be overlooked,

however, that the reduction in the sentence is also justified by the disadvantages suffer by Mr. Skelde in formulating his defence as a result of the jurisdictional dissent between the UCI/DCU and the Danish NOC.

C. Costs

In view of the outcome of the case, the Panel renders its decision without awarding costs. The Sfr. 500.00 filing fee paid by the UCI shall be retained by the CAS (Rule 65.1 and 65.2 of the CSA). The parties to this dispute shall bear their own costs.

* * * * * * * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport pronounces :

I. The January 19th, 1998 Decision of the Doping Tribunal of the National Olympic Committee and Sports Confederation of Denmark (Danmarks Idreaets-Forbund) as modified by the Decision of the Commission of Appeals and Arbitration of May 4th, 1998 shall be modified as follows:

(1) The term of the sentence shall be reduced from two years to nine months commencing as of December 12th, 1997. Accordingly, the term of suspension ends August 11th, 1998.

(2) The Court of Arbitration for Sport imposes a fine on the Respondent Skelde in the amount of SFr. 2,000.00 (two thousand Swiss Francs).

II. The award is pronounced without costs, except for the Court Office fee of Sfr. 500.00 which is retained by the CAS.

III. The parties to this dispute shall bear their own costs.

Lausanne, October 21, 1998

THE COURT OF ARBITRATION FOR SPORT

President of the Panel

John A. Faylor

Arbitrators

Olivier Carrard

Guido De Croock

TAB 21

Arbitration CAS 98/192, Union Cycliste Internationale (UCI) / S., Danmarks Cykle Union (DCU) and Danmarks Idraets-Forbund (DIF), award of 21 October 1998

Panel: Mr. John Faylor (Germany), President; Mr. Olivier Carrard (Switzerland); Mr. Guido de Croock (Belgium)

Cycling
Doping (testosterone)
Conflict between the rules of an International Federation and those of a National Olympic Committee

1. **Rule 30 of the Olympic Charter assigns the international federations the responsibility to "establish and enforce, in accordance with the Olympic spirit, the rules concerning the practice of their respective sports and to ensure their application". The mission of the NOC's, on the other hand, is to "fight against the use of substances and procedures prohibited by the IOC or the IFs." This mission is focused upon political actions vis-à-vis the competent authorities of their respective countries.**
2. **The international federations enjoy the principal competence with regard to the fight against doping. The natural consequence of this is that their rules prevail over those which an NOC or national sports authority (for example an NF) might have enacted.**
3. **Pursuant to the UCI regulations, in case of endogenous steroids, a sample is deemed positive if the urine T/E ratio is above 6, unless this ratio is attributable to a physiological or pathological condition.**

The International Cycling Union (hereinafter "UCI") is an international federation of national cycling associations. UCI is governed by its constitution and regulations, among them the "Cycling Regulations" and the "Antidoping Examination Regulations", the latter being most recently amended after approval of the UCI Management Committee on November 15th, 1997. The "Antidoping Examination Regulations" are hereinafter referred to as the "UCI AER".

S. is a Danish citizen and a cyclist of the elite category. He is the holder of a rider's license issued by the Danmarks Cykle Union.

Danmarks Cykle Union (hereinafter "DCU") is the Danish national cycling federation which is a member of both the International Cycling Union and the National Olympic Committee of Denmark. The latter recognizes the DCU as the exclusive federation for the sport of cycling in Denmark. By virtue of its affiliation with the UCI, it has subscribed to the "Cycling Regulations" and the "Antidoping Examination Regulations of the UCI".

Danmarks Idraets-Forbund is the Danish National Olympic Committee (hereinafter the "Danish NOC") whose membership consists of one national sports federation, associate federation, sports organization or service beneficiary organization for each Olympic sport in Denmark. Like the UCI, it, also, is recognized by the IOC. The Danish NOC is governed by its Statutes on the basis of which it has promulgated its own Doping Control Regulations. By virtue of Art. 6, para 3.1 of the Statutes of the Danish NOC, the DCU must submit to doping control conducted by the NOC's Doping Control Committee on the basis of its Doping Control Regulations.

On 7 August 1997, S. participated in the Tour of Denmark ("Post Danmark Rundt"), an international cycling event on the UCI's International Calendar for elite riders. After the competition, S. was required to submit to a doping test pursuant to the rules set forth in the UCI's AER. Upon analysis of the A-Sample on 7 August 1997, the Doping Analytical Section of the Rigshospitalet in Copenhagen reported to the UCI Antidoping Commission in Lausanne on 18 August 1997 that a Testosterone/Epitestosterone Ratio (T/E Ratio) of 8.2 was identified in the urine specimen. After submission of additional data by the Rigshospitalet on 18 August 1997 regarding the concentrations of prohibited substances in the specimen, the UCI Antidoping Commission, acting in accordance with Article 59 of the UCI AER, notified the DCU per letter of 21 August 1997 that S. tested positive. The UCI Antidoping Commission pointed out that in light of the excessive T/E Ratio, S. must be given the opportunity to undergo further endocrinological examination in a laboratory to be chosen by the UCI in order "*to ascertain whether this high ratio is due to a physiological or pathological condition.*" This procedure accords with the rules set down in the UCI's List of Categories of Doping Substances and Methods (List Nr. 1/97 of the UCI). The UCI stated in this letter that:

> "*Should [S.] not wish to avail himself of this right, you will have to initiate the procedure provided for in Art. 60 to 65 of the same Regulations.* ***We would remind you that, under the said articles, you have to keep us informed of all steps you take by sending us copies. Moreover, we draw your attention to the fact that – according to Art. 82, § 3 – if there is no final decision within the deadlines (see Art. 82, § 1), the defendant shall be automatically suspended until the date of the decision, unless an extension of the period is granted by the Antidoping Commission.***"

(Bold lettering contained in original letter of notification)

The DCU confirmed receipt of this notification on 29 August 1997 and reported that it was "in contact" with S. and that he had chosen to submit to an endocrinological examination. It informed the UCI Antidoping Commission that the examination would take place on 29 September 1997 and be repeated two months later. The DCU stated explicitly in this letter that:

> "*... the results from these tests will form the basis of the judgment in Denmark. The test results will of course be at your disposal, should you wish so. If the UCI will recognize this method as the basis of judgment in the matter together with a later laboratory test, i.e. after three months, we ask you kindly to inform us about it.*"

The DCU's reference to being "in contact" with S. refers to the letter of the Doping Control Commission of the Danish NOC to S. of 26 August 1998. Acting at the request of the DCU and on the basis of the UCI's 21 August letter, the Danish NOC notified S. that the sample taken on 7 August 1997 showed a raised T/E ratio of 8.2. The Danish NOC's letter proceeds to state to S. that before the sample can be declared positive or negative additional testing will be required. This letter to S. from the Danish NOC makes no mention of the procedures of the UCI Antidoping Examination Regulations, nor does it inform the rider of his rights to request an endocrinological examination as explicitly described in the UCI notification letter of 21 August 1997 to the DCU. It points out to S. that "the rules on the T/E ratio are described in "Information on Doping", page 4 and provide:

> *If the ratio between testosterone and epitestosterone (T/E ratio) at urine analysis is more than 6 to 1, then there is a violation of the regulations, unless there is proof that the matter deals with a physiological or pathological case.*
>
> *If the T/E ratio is greater than 6, additional tests will be made before the sample is declared to be positive.*
>
> *We therefore ask you, as quickly as possible, to contact the Doping Control Commissions's Dr. Jens Elers, at telephone number 7589 1811, to discuss an appointment for a new test.*"

(Unofficial Translation of the Panel)

The UCI was not in possession of this letter as of 10 July 1998, the date of the Panel's hearing of this dispute. It was expressly requested by the Panel pursuant to its Order of 10 July 1998.

In the report of its results of the endocrinological tests dated 19 November 1997, the Deutsche Sporthochschule Köln, Institut für Biochemie, stated that:

> "*[S.] does* ***not*** *have a naturally elevated T/E ratio. All steroid profile parameters of the athlete are within the population based reference ranges of male athletes. The T/E ratio of Code No. A047027 is both outside the individual reference range and the population based reference range for the T/E value. We recommend to give the sample A047027 positive for the application of an endogenous steroid. The GC/C/IRMS results are in accordance with the results obtained after an application of dehyroepiandrosterone (DHEA).*"

(Bold type also contained in original of the report.)

The UCI Antidoping Commission informed the DCU on 19 November 1997 of the results of the endocrinological examination conducted in Cologne and asked the DCU " ... *to continue the procedure according to Art. 62 and subsequent of the UCI Antidoping Examination Regulations in force. We would remind you that, under the said articles, you have to keep us informed of all steps you take by sending us copies.*"

Again, the UCI Antidoping Commission issued its instructions that, in accordance with Art. 82 Section 1 of the UCI AER, proceedings before the DCU's competent doping tribunal must be ended within one month of receipt of the notification of the

positive result of the A-Sample and, in the event of the counter-analysis of the B-Sample, any extension of time required between the date of the rider's request for the "counter-analysis" and the date on which the laboratory issues the results of such "counter-analysis."

The DCU forwarded the UCI's letter of 19 November together with the examination report of the Cologne laboratory directly in a letter to S. dated 20 November 1997. It did not first notify the Danish NOC of the results of this examination. The letter from the DCU to S. stated as follows:

> *"UCI therefore considers this matter to be a doping matter and have asked us to act in accordance with UCI's Doping Statute. The letter has, in accordance with the applicable regulations, been delivered to DIF's Doping Control Commission. They will, at a meeting on Tuesday November 25, make a decision on whether they will commence proceedings. As part of their consideration, they will review the 4 tests taken by Dr. Jens Ehlers.*
>
> *You must do the following:*
>
> *(1) In accordance with UCI's Doping Statute, you must, before Wednesday November 26, decide whether you want to have the B-sample analyzed – and, if so, you must advise DCU's office of your decision in writing, Wednesday morning at the latest, by the morning mail, otherwise the opportunity will have passed with respect to the UCI – kindly note the enclosed signature form. You have the possibility of coming there yourself in person and may take one companion with you. You are required to pay all expenses in connection with the B-sample analysis in Copenhagen. The actual taking of the sample is free.*
>
> *(2). ... "*

(Unofficial Translation of the Panel)

The submission of the above correspondence was requested by the Panel by its Order of 10 July 1998.

The DCU informed the UCI Antidoping Commission in its letter of 24 November 1997 that S. would have until 26 November to request analysis of the B-sample and that the case *"has been handed over to the NOC Antidoping Commission for further action."*

In a further letter statement from the DCU dated 27 November 1997, the UCI Antidoping Commission was instructed that S. had requested the analysis of the B-sample and that this analysis would take place on Monday, 1 December 1997 at the Dopinganalysesektionen, Rigshospitaet, Copenhagen. The results of the analysis were notified directly by the Rigshospitalet to the UCI Antidoping Commission by letter dated 3 December 1997. The results were positive.

The UCI Antidoping Commission notified the DCU of the positive result of the counter-analysis of the B-sample by letter of 3 December 1997 and confirmed *"that it is objectively an infraction to the UCI Antidoping Examination Regulations (T/E 7.9)."* After stating that the result of the endocrinological study carried out at the Institut

für Biochemie in Cologne was positive as well, the letter asked the DCU "*to implement proceedings according to Arts. 69 and the following of the UCI Antidoping Examination Regulations.*" The letter again gives notice that "*... according to the said articles, you have to keep us informed of all measures you take by sending us copies thereof.*"

The letter also repeats the reference to Art. 82 Section 1 regarding the deadlines for ending the proceedings before the competent tribunal of the National Federation and the requirement for suspension if no final decision is made within these deadlines unless an extension of the period is granted by the Antidoping Commission.

By letter dated 27 January 1998, the DCU informed the UCI that, on 19 January 1998, a verdict had been rendered by the Doping Tribunal of the Danish NOC in the S. matter. The Doping Tribunal sentenced S. to a two year suspension commencing 13 December 1997. The Tribunal held that both the A- and B-Samples had been identified as positive and that the Institut für Biochemie in Cologne had concluded that the T/E ratio found in the samples was not naturally increased. With respect to the sentence, the Tribunal of the Danish NOC held:

> " *... the Doping Tribunal is aware of the divergence between the rules of the UCI and the rules of the NOC and Sports Confederation of Denmark and of the fact that it is the policy of the NOC and Sports Confederation of Denmark not to protest, should the UCI in the following decide to fix a penalty for international competitions in accordance with UCI rules. In conformity with Art. 6, Par. 1 of the Doping Control Regulations, the Doping Tribunal finds that the penalty shall be two years suspension from participation in all sports under the National Olympic Committee and Sports Confederation of Denmark.*"

In its Statement of Appeal dated 27 February 1998, the UCI pleaded that the two year sanction imposed upon S. by the 19 January decision exceeded the maximum sanctions prescribed by the applicable UCI Antidoping Examination Regulations and petitioned the CAS to impose the sanctions prescribed in Articles 90 through 94 of the UCI AER. In addition, the UCI challenged the fact that the decision of the Doping Tribunal did not pose a disqualification from the Tour of Denmark or a fine. The Appeal cited Articles 84 to 89 of the UCI AER as the basis for jurisdiction of the CAS and, alternatively ("by way of precaution"), Article 135.

UCI's statement of appeal was served upon S., the DCU and the Danish NOC by letter of 3 March 1998.

In a brief dated 9 March 1998, legal counsel for the UCI provided arguments in support of the appeal. This brief was forwarded to S., the DCU and the Danish NOC immediately upon receipt.

The UCI stated in its 9 March 1998 brief that it accepted DCU's appointment of the NOC's Doping Tribunal as, " *... its competent body, which appointment apparently is based on DCU's perception that they are obliged under Danish NOC rules to refer doping matters to the said Doping Tribunal.*"

Counsel for the UCI stated further that the appeal from the Doping Tribunal's decision may not be taken before any other body (appeal or higher court) within that same federation, unless the legislation of the country so requires. Citing Art. 84

Section 2, counsel for the UCI concluded that no other recourse than the appeal before the CAS shall be permitted. UCI counsel stated as follows:

> *"UCI accepts that the suspension starts from 13 December, 1997 from which date [S.] has been suspended on the basis of Art. 8 of the "Doping Control Regulations" of the NOC and Sports Confederation of Denmark, on the condition that it is shown by the defendants that such suspension has been effectively served by [S.] in a period of normal competition activity (see art. 94 AER). It should be noted in this respect that according to AER a rider cannot be suspended before his case is brought to trial and judgment is pronounced and that a retrospective suspension is not possible – see article 94 AER".*

UCI's counsel cited the fact that in the case of a divergence between the rules of an international federation such as the UCI and the rules of a national body, the former prevail. He cited, in this regard, the CAS Advisory Opinion of 5 January 1995 r.a. CONI/UCI (see Digest of CAS Awards 1986–1998) and the CAS Decision no. 97/169 regarding M./FCI.

In further support of UCI's jurisdiction in the matter, counsel for the UCI stated as follows:

> *"In addition, an agreement was made between UCI, DCU and Denmark's NOC that the Doping Tribunal would act as DCU's competent body for handling doping cases according to Art. 71 AER and that the Doping Tribunal would apply AER."*

The reasons for such agreement were that Denmark's NOC did not allow its member federations to sanction doping offences themselves (which is confirmed in the Doping Tribunal's fax to UCI of 5 December 1997). UCI did not agree with such a position, but in order to avoid more difficulties UCI accepted the said agreement as a practical solution which, in addition, was not in contradiction with AER.

It has become clear now that, in contradiction with the agreement, Denmark's NOC refuses to apply AER."

Lastly, UCI takes the position that the position expressed by the Danish NOC stands in conflict with the Olympic Charter:

> *"Paragraph 2.6 of Rule 31 stipulates that it is the mission and the role of the NOC's to fight against the use of substances and procedures prohibited by the IOC or the IF's, in particular by approaching the competent authorities of their country so that all medical controls may be performed in optimum conditions. The role of the NOC's regarding doping is not in establishing or ensuring the application of doping rules, but in prevention and in creation of the conditions for an optimum application of the doping rules issued by the IOC and the international federations. Also, Rule 33 of the Olympic Charter stipulates that to be recognized by an NOC, a national federation must, inter alia, conduct its activities in compliance with both the Olympic Charter and the rules of its IF. Therefore, an NOC must respect itself the rules of the international federation and cannot forbid a national federation to apply the rules of its international federation."*

Finally, counsel for the UCI cites the alternative application of Art. 135 of the UCI AER as a basis for the jurisdiction of the CAS:

> *"An appeal may be brought before CAS against the decision of the Doping Tribunal if it acted as the competent body under AER.*
>
> *Now that it appears that the Doping Tribunal did not want to apply AER, UCI is also entitled to ask CAS for a final decision on the grounds of Art. 135 AER, as DCU has taken no decision and will not take a decision as long as Danmarks Idraets-Forbund forbids DCU to do so and CAS will not have confirmed that AER has to be applied in all parts."*

In a letter from the Doping Control Commission of the Danish NOC to the UCI dated 10 March 1998 and forwarded to the CAS on 18 March 1998, the Doping Control Commission stated that S. had appealed the sentence of the Doping Tribunal of the Danish NOC to the Commission of Appeals and Arbitration of the Danish NOC. It noted that, because the appeal to the CAS by the UCI was not based on a final sentence of the Danish NOC's Doping Tribunal, the case pending before the CAS should be postponed until the result of the appeals case in Denmark is known, probably in April 1998. The letter refers to a meeting which would take place between the UCI and the Danish NOC to seek a solution *"which respects both organizations' doping regulations, but avoids that every doping case involving Danish cyclists must also be heard before the CAS."*

In an undated letter received by the CAS on 16 March 1998, S. stated that he *"was not quite sure whether [he] understood the situation totally."* He alleged that he could not understand how he could have used an illegal substance, pointing out that DHEA did not stand in any published doping list in Denmark in the year 1997. He stated that the raised T/E ratio had a "natural reason".

In response to the inquiry posed by the CAS to the UCI concerning the postponement of the proceedings requested by the Danish NOC, counsel for the UCI stated on 23 March 1998 to the CAS that UCI agreed to such postponement *"until further notice from me"*, pointing out, however, that this request had nothing to do with the appeal in Denmark, but with a meeting which was scheduled between UCI and the Danish NOC at which time the conflict between the UCI rules and the NOC rules would be discussed.

Having obtained the agreement of all parties concerned in the dispute, the CAS ordered the postponement to commence on 30 March 1998.

On 4 May 1998, the appeal filed by S. was heard before the Commission for Appeals and Arbitration of the Danish NOC. The two year sentence imposed by the Doping Tribunal on 19 January 1998 was upheld, but the commencing date of the suspension was moved back by one day to 12 December 1997.

In his letter to the CAS dated 11 May 1997, counsel for the UCI requested that the proceedings before the CAS be resumed.

In his brief dated 13 May 1998, S. requested that his case "be taken up". He pleaded that the penalty imposed by the Doping Tribunal is longer than the sanction prescribed by the UCI and that for this reason it is unacceptable. He pleaded: *"A*

possible judgment in CAS ought to be valid for all bicycle events within the framework of the UCI – worldwide." In his defense, S. cited irregularities in the labeling of the sample bottles which implied that the bottle codes were changed, that the T/E corrected ratio of 6.0 established in the Institut für Biochemie was not above the legal limit, that he did not take a banned substance, that especially his loss of weight and rest had caused his "special situation" and that DHEA had been sold until then in Denmark as a legal substance.

In its letter of 26 May 1998, the CAS informed all parties that upon request of the UCI the proceedings would "now resume". S., the DCU and the Danish NOC were called upon to submit by 18 June 1998 an answer to the appeal statement.

By letter of 22 June 1998, the parties to the proceedings were informed that a hearing before the Panel would take place in Lausanne on 10 July 1998. In a letter dated 2 July 1998, the Danish NOC informed the CAS that the Danish NOC would not attend the hearing and that "*It should be stressed that as far as the NOC and Sports Confederation of Denmark is concerned, this case is between UCI and [S.], and the NOC does not consider itself part of this case.*".

In a letter dated 6 July 1998 to the CAS, the DCU stated that it would not be present as the scheduled hearing. It cited the fact that S. had been suspended on the basis of "*national rules and not the UCI antidoping regulations*". The DCU pleaded that it is "*forced to let all doping cases be handled by the Doping Tribunal of NOK*" and that, for this reason, it did not consider itself a party to this dispute. The letter proceeds:

> "*We, the Danish Cycling Federation, are looking forward to a verdict from CAS that will solve the problem between Danish NOC and UCI. A verdict that means that the Danish Cycling Federation in the future cannnot be held hostage between the Danish NOC and the UCI.*"

On 10 July 1998, the Panel held a hearing to which all parties were invited. The UCI was represented by its legal counsel and by its Medical and Anti-Doping Coordinator. Neither S. nor the DCU nor the Danish NOC appeared at this hearing.

When questioned by the Panel during the hearing, legal counsel for the UCI stated that the DCU had always told the UCI that it had no jurisdiction to deal with doping cases and that it had to refer these cases to the Danish NOC for a decision. This question of jurisdiction in Denmark had been discussed with all parties concerned and that the Danish NOC had accepted application of the UCI's AER instead of their own regulations, but that the Danish NOC did not respect this agreement.

Upon further questioning by the Panel regarding information provided by the DCU and the Danish NOC to the UCI, legal counsel for the UCI confirmed that the UCI had received only a copy of the decision made by the Danish NOC. No other information relating to the proceedings had been submitted to the UCI. The UCI could not intervene properly during the proceedings because it was not informed about the schedule of the procedure. At the time this procedure started, stated the UCI's legal counsel, the UCI was confident that the UCI's AER would be applied by the competent tribunal in Denmark.

In response to the interrogatories raised by the Panel, the Danish NOC reiterated its position stated in its letter of 2 July 1998 that it considers itself "*not party to the case UCI v/S.*"

> *"As a national sports federation affiliated to Danmarks Idraets-Forbund, Danmarks Cykle Union must observe DIF's rules and regulations, including suspension of athletes in connection with doping sentences. If Danmarks Cykle Union fails to comply with decisions by Danmarks Idraets-Forbund it may result in Danmarks Cykle/ Union's exclusion from Danmarks Idraets-Forbund.*"

In this response, the Danish NOC further confirmed that "*Danish law does not impose rules or requirements in terms of procedure and sanctions which would prevent the application of the UCI's Anti-Doping Examination Regulations.*"

In its response to the interrogatives raised by the Panel's 10 July 1998 order, the DCU has confirmed that "*the rider has been informed of the development in his case by copies of all correspondence between DCU/UCI/DIF/CAS. All copies have been sent immediately after we received them at the DCU office.*"

LAW

1. UCI's appeal of the 19 January 1998 decision of the Doping Tribunal of the Danish NOC was filed within the applicable deadlines. Rule 49 of the Code of Sports-Related Arbitration ("the Code") sets the time limit for appeal at 21 days from the communication of the decision which is appealed, provided the statutes or regulations of the federation, association or sports body concerned do not set a different limit. Pursuant to Article 86 of the UCI's AER, the statement of appeal must be lodged with the CAS within 1 month from receipt of the decision by the Appellant. The UCI received notice of the Doping Tribunal's decision of 19 January 1998 [after 27 January 1998]. The UCI's Statement of Appeal dated 27 February 1998 was received by the CAS per registered mail on 3 March 1998. Accordingly, the 21-day limit set forth in Rule 49 of the Code will not apply.

2. UCI's Appeal Brief dated 9 March 1998 was received within the 10-day period described in Rule 51 on 10 March 1998. Both response by S. and counter-appeal and his appointment of an Arbitrator were received on 18 March 1998, both declarations being made within the time limits set forth in Rules 53 (appointment of arbitrators) and 55 (answer of respondent) of the Code.

3. Neither DCU nor the NOC filed statements which could be construed as responses within the meaning of Rules 53 and 55 of the Code. To the contrary, their letters to the CAS dated 6 July 1998 and 2 July 1998, respectively, indicate that they do not consider themselves parties to this arbitration.

4. After review of the facts of this case and the applicable provisions of the Olympic Charter and the AER of the UCI, the Panel has concluded that the participation of the DCU and the Danish NOC as parties to these proceedings is not required.

On the grounds further discussed below, the Panel holds that the Doping Tribunal of the Danish NOC acted only as the "competent body" of the DCU for adjudicating doping offences. The jurisdiction to be exercised in this case was the jurisdiction of the UCI. Because the DCU was exercising the (original) jurisdiction of the UCI and because the DCU delegated prosecutorial and judicial authority to the Doping Tribunal of the Danish NOC with the consent of the UCI, all actions, measures and decisions of the Danish NOC's Doping Control Commission and the Doping Tribunal must be attributed to the UCI. Accordingly, the Panel deems that only the UCI and S. may be considered parties to this dispute. For this reason, the Danish NOC's withdrawal from the proceedings as declared in its 2 July 1998 brief to the CAS, despite its earlier approval of the arbitrator chosen by S., and its recommendation to suspend the proceedings raised in its 10 March 1998 brief to the CAS have no dispositive effect upon these proceedings.

5. The Panel has determined that the brief of S. of 15 March 1998 to the CAS meets the requirements of Rule 53 of the Code. He received the UCI Appeal Brief under cover letter of the CAS dated 13 March 1998. Because the proceedings were suspended by Order of the CAS of 30 March 1998, the 20-day time limit for filing his answer to the Appeal Brief pursuant to Rule 55 of the Code had not yet expired. Appellant's 13 May 1998 brief to the CAS, which ended the suspension, constituted both a response coupled with the filing of his own appeal for a reduced sentence.

6. The jurisdiction of the CAS is founded on Article 84 AER. Both the UCI and S. have the right pursuant to this provision to enter an appeal against the 19 January 1998 decision of the Doping Tribunal of the Danish NOC by requesting arbitration before the CAS. Paragraph 2 of this Article 84 clearly and unequivocally states that *"no other recourse shall be permitted."* The Commission of Appeal and Arbitration of the Danish NOC had no jurisdiction to hear the appeal filed by S. Moreover, Article 81 AER establishes that:

 "The decision, once taken by the competent body of the National Federation of the rider or the license-holder concerned, may not be appealed before any other body (appeal or higher court) within that same Federation unless the legislation of the country in question so requires."

7. The Danish NOC confirmed in its 20 July 1998 response to the Panel's corresponding interrogatory that Danish law does not impose rules or requirements in terms of procedure and sanctions which would prevent the application of the UCI's AER.

8. The Doping Tribunal of the Danish NOC, which acted as the "competent body" of the DCU in the adjudication of the doping violation, erred, however, in its application of the Doping Control Regulations, in particular, with regard to the sanctions imposed.

9. Article 4 AER states that *"these Regulations and these alone"* shall apply to international competition. The AER is *"binding upon all National Federations which may*

neither deviate therefrom nor add thereto." Accordingly, the AER was binding upon the DCU in its handling of doping cases. As counsel for the UCI stated during the hearing on 10 July 1998, the UCI has chosen not to adjudicate doping violations within the framework of its own organization, i.e., by instituting its own tribunal and trying doping cases itself, but has delegated its jurisdiction to the national federations for reasons compelled by the proximity of the national tribunal to the athlete, language differences and costs.

10. Pursuant to the rules set forth in Articles 69 et seq. AER, therefore, the DCU is charged with the investigation, prosecution and adjudication of international doping violations. It utilizes its competent bodies in the exercise of UCI's jurisdiction. The only exceptions hereto concern races on the national calendar of the respective national federation when national regulations are permitted to be applied (see Preliminary Provisions No. 1 of the 1996 UCI Cycling Regulations). The Tour of Denmark was, however, undisputedly a race on the International Calendar of the UCI.

11. On the basis of the UCI's own admissions, it has recognized and accepted that the DCU has appointed the Doping Tribunal of the Danish NOC as its (the DCU's) "component body". The UCI has provisionally agreed, pending further negotiations with the Danish NOC, to accept this appointment in recognition that the Danish NOC has mandated under its Doping Control Regulations that "*no member federation is allowed under these regulations to conduct doping cases on its own, regardless of the regulations of the International Federation in question*" (see Letter of the Danish NOC dated December 5th, 1997 to UCI).

12. The UCI's provisional acceptance of the appointment was made subject, however, to the condition that the Doping Tribunal of the Danish NOC applies the UCI's AER. This fact is clearly evidenced in the letter issued by Werner Göhner as President of the Antidoping Commission of the UCI dated 12 December 1995. Despite the evidence submitted by the UCI in the form of the correspondence passed between the UCI, the DCU and the Danish NOC in November/December 1995, the Panel is forced to conclude that no agreement ever existed between them regarding the application of the UCI's AER. The existence of this hidden dissent was first exposed in the grounds of the Doping Tribunal's decision that, in light of the divergence between the rules of the UCI and the Danish NOC, it is the policy of the latter "not to protest" if the UCI, subsequent to the national decision, wishes to set its own penalty for violations of UCI rules in international competition.

13. Accordingly, the Danish NOC appears to assume that two separate and independent jurisdictions exist with regard to international doping cases: (1) the jurisdiction of the UCI for international sporting events and (2) the exclusive jurisdiction of the Danish NOC with regard to sanctions to be imposed upon Danish athletes, regardless of whether the event in question is on the International Calendar of the UCI or is exclusively a Danish national event.

14. The Panel wishes to establish, however, that the parallel jurisdiction of the kind propagated by the Doping Tribunal and in the pronouncements of the Danish NOC does not take into account the following considerations:

 If the Danish NOC agrees to respect the jurisdiction of the UCI with regard to international sporting events, but insists, at the same time, upon the hearing of all doping cases involving Danish athletes before its own tribunals under exclusive application of its own Doping Control Regulations (see Art. 9 para. 3 of its Regulations amended as of 1 December 1996), it inexorably deprives the UCI of any jurisdiction whatsoever to enforce its Antidoping Examination Regulations with regard to Danish athletes competing in international sporting events inside and outside of Denmark.

15. The issue which the Danish NOC has chosen to ignore is the following: How are violations of the international doping provisions of the International Federations to be prosecuted and adjudicated in Denmark, if the Danish NOC in the exercise of its jurisdictional monopoly denies the DCU or any other National Federation the opportunity to decide international doping violations within its own competent bodies on the basis of international rules and regulations? If the Danish NOC states that its jurisdiction is "only national", but refuses at the same to apply the international rules of the UCI's AER in the competent bodies to which the DCU has legitimately – and with the consent of the UCI – delegated its authority, the Panel is forced to conclude that doping violations of Danish athletes participating in international competition will remain unenforced. This cannot be the intention or the policy of the Danish NOC.

16. In this regard, the Panel need not remind the Danish NOC of its rights and obligations and those of the international federations pursuant to the Olympic Charter. Rule 30 of the Charter assigns the international federations the responsibility to "*establish and enforce, in accordance with the Olympic spirit, the rules concerning the practice of their respective sports and to ensure their application.*" The mission of the NOC's, on the other hand, is to "*fight against the use of substances and procedures prohibited by the IOC or the IFs.*" This mission is focused upon political actions vis-à-vis the competent authorities of their respective countries. The Danish NOC is bound in Rule 33 to "*conduct its activities in compliance with both the Olympic Charter and the rules of its IF.*" In the Advisory Opinion rendered by the CAS in the case CAS 94/128 UCI/CONI (see *Digest of CAS Awards 1986–1998*, Staempfli Editions, Berne, 1998, p. 495), the Panel held that " ... *the IFs enjoy the principal competence with regard to the fight against doping. The natural consequence of this is that their rules prevail over those which an NOC or national sports authority (for example an NF) might have enacted.*"

17. Because the Panel does not wish to conclude that it has become the policy of the Danish NOC to hinder the enforcement of international antidoping regulations in Denmark, it concludes that the Doping Tribunal of the Danish NOC has erred in not applying the AER in the case at hand. This conclusion does not stand in

conflict with the Doping Control Regulations of the Danish NOC. Art. 5 of the Regulations states that *"Doping control shall be conducted in accordance with the regulations of the International Olympic Committee, the member organization's international body and the rules of the National Olympic Committee and Sports Confederation of Denmark."*

18. The Panel has also concluded that the UCI acted in good faith in believing that the Danish NOC would apply the UCI's AER, although the Panel has certain reservations with regard to the diligence with which the UCI Antidoping Commission exercised its interventional prerogatives as set forth in the AER. UCI had authority to intervene in the proceedings, either in writing or through its presence at the hearing, and to demand the imposition of a penalty pursuant to Art. 90 (1) AER. It did not exercise these rights. Clearly, it failed to even give an opinion in the case, although Article 73 para. 1 mandates that *"the hearing may not take place unless the UCI has stated its opinion or has in writing waived its right to do so."*

19. The proceedings against S. were initiated by the UCI in accordance with Articles 58 et seq. of the AER. Its notification to the DCU of 21 August 1997 conformed to the requirements of Article 59 para. 2 AER. The UCI also informed the DCU in this letter and in its subsequent letter of 19 November 1997 that it must adhere to the procedures provided in Article 62 through 65. Moreover, it reminded the DCU in both letters that, pursuant to the said Articles, UCI was to be kept informed *"of all steps you take by sending us copies"*. Despite these instructions and the clear references to the DCU's informational obligations, the UCI's failure to request information regarding the initial scheduling and the course of proceedings cannot be overlooked. Had the Antidoping Commission of the UCI diligently and circumspectively requested information, it may have learned far before the decision of the Doping Tribunal that the AER were not being applied.

20. If, therefore, the UCI was caught by surprise upon learning in the 19 January 1998 decision of the Doping Tribunal that only the sanctions contained in the Doping Control Regulations of the Danish NOC were applied to the total exclusion of the UCI'S AER, the Panel is forced to attribute a certain portion of fault to the Appellant itself. In making this judgment, however, the Panel acknowledges that the UCI, upon learning the tenor of the Tribunal's decision, acted correctly in immediately appealing the decision to the CAS and not allowing the case to be heard on appeal by S. before the Commission of Appeals. Counsel for the UCI was careful to establish in his 23 March 1998 letter to the CAS, that his willingness to accept the suspension of the proceedings had *"nothing to do with the appeal in Denmark, but with a meeting scheduled between the UCI and the Danish NOC in order to resolve jurisdictional issues."*

21. It is also clear to the Panel that the DCU attempted and failed to reconcile the short-sighted and intransigent position of the Danish NOC with regard to its

claim of exclusive jurisdiction in doping matters, on the one hand, with the UCI's misplaced faith and trust that doping violations brought before the Doping Tribunal would be decided on the basis of the AER, on the other. The DCU's handling of the flow of information regarding the course of the proceedings demonstrates its dilemma impressively. The DCU has indeed been placed in a position which it cannot resolve itself and its reference to being held "hostage" between the Danish NOC and the UCI is not without grounds. All parties acting in this dispute must realize, however, that the real victim of this jurisdictional impasse is not the DCU, but rather the athlete, S.

22. In the 26 August 1997 notification of the Danish NOC to S. that his A-sample had tested positive, a notification initiated by UCI and passed through the DCU to the Danish NOC's Antidoping Commission, no mention is made at all of the rules and regulations which would apply in adjudicating his case. Even the instructions given to him regarding his rights in light of the excessive T/E Ratio make no reference to the rules which govern. The Doping Control Commission of the Danish NOC cites merely the "Information on Doping" page 4, without even identifying whose "Information" is meant. No explicit reference is made to the rules which will apply, neither to the Doping Control Regulations of the Danish NOC nor to the AER of the UCI. DCU's failure to furnish the UCI a copy of this letter allows the inference to be drawn that the DCU did not wish to make the UCI aware that its rules would not be applied. Importantly, however, the instructions given to S. regarding his rights with regard to the endocrinological examination were incorrect and certainly did not conform to the AER. These documents show clearly that the Danish NOC never intended to apply the AER. This letter was never sent in copy to the UCI. The UCI learned of its content only after the copy was requested by the Panel in its 10 July 1998 Order.

23. The opposite occurred, however, with the DCU's letter to S. of 20 November 1998. This letter was sent directly by the DCU to S. The defendant is placed on notice that, in light of the findings of the Cologne laboratory, the UCI considers the matter to be a doping matter and that it (the DCU) has been asked to act in accordance with UCI's doping statute. The letter further states that, "*in accordance with UCI's doping statute, S. must decide whether to request an analysis of the B-sample.*" This letter was sent in copy to the UCI in compliance with the information instructions given to the DCU by the UCI. Here, however, the DCU could assume that the express reference to the application of the AER would assure the UCI that its rules were being applied. The question posed, however, is how S. reacted to these instructions, in particular, in light of the conflicting reference to the Danish NOC's "Information on Doping" made in the 26 August notification letter.

24. This correspondence with S. – with only a portion of it being received in copy by the UCI – reflects the torturous dilemma in which the DCU found itself and clearly demonstrates the confusion which must have arisen in the eyes of S.

25. After all of the above, the Panel has concluded that the jurisdiction of the CAS is based on Art. 84 UCI. The Doping Tribunal of the Danish NOC acted as the "competent body" of the DCU with the knowledge and consent of the UCI. The DCU, in turn, exercised the original jurisdiction of the UCI as prescribed by the applicable provisions of the AER. The UCI initiated the doping proceedings against S. in accordance with AER, informed the DCU regarding applicable deadlines and requested to be kept informed of all measures taken by the DCU in the proceedings. Its good faith reliance upon the DCU's representations is evidenced in the exchange of information between the UCI and the DCU, on the one hand, and the DCU/Danish NOC and S., on the other. It is shown clearly in the UCI's timely filing of its appeal to the CAS in accordance with Art. 84 and its refusal to accept the jurisdiction of the Danish NOC with regard to the appeal by S. to the Commission of Appeals of the Danish NOC.

26. Pursuant to Art. 2 of the AER, the use of the pharmaceutical substances appearing on the List of Categories of Doping Substances and Methods is prohibited. S. tested positive for the use of testosterone, which is on the List of Categories which became effective as of 1 May 1997.

27. For endogenous steroids, a sample is deemed positive if the urine T/E ratio is above 6, unless this ratio is attributable to a physiological or pathological condition. In the case of S., the A-sample was found to have a T/E ratio of 8.2. The endocrinological examination determined that the ratio was not due to a natural physiological or pathological condition. Furthermore, the B-sample also yielded a positive result with a T/E ratio of 7.9. The Cologne laboratory recommended that the sample be declared positive for the application of an endogenous steroid, stating that "*the GC/IRMS results are in accordance with results obtained after an application of dehyroepiandrosterone (DHEA).*" The Doping Tribunal found that a result of 6 from the laboratory which conducted the analysis of the B-sample was a "corrected ratio" figure, and accepted the recommendation of the laboratory that the sample be considered positive. The Panel finds no grounds upon which the accuracy of these findings is subject to challenge.

28. S. points out that there was a correction of the bottle code number on the control form. However, he advances no other evidence in support of a charge that the sample was misplaced, tampered with, manipulated, switched, etc. It is the opinion of the Panel that the crossed-out code number in the appropriate box reflects a slip of the hand at the time the control form was filled out by the competent official. If this slip took place subsequent to the signature of the form, there is no record that S. raised an objection or initiated any inquiries at the analyzing laboratory to determine the origin of the changed code number, thus indicating that the change was done before his eyes at the time the control form was filled out. Therefore, the Panel concurs with the Doping Tribunal that "*the fact that a figure has been corrected in a form ... does not afford grounds for assuming that there has been a mistake with respect to the identity of samples.*"

29. S. claims that there could be natural reasons for the fluctuation in his T/E ratios. However, the endocrinological examination ruled out any physiological causes for the elevated ratios. Furthermore, a Gas-Chromatography/Combustion/Isotope Ratio Mass Spectrometry analysis was performed which confirmed the exogenous application of testosterone and dehydroepiandrosterone (DHEA). The contention by S. that DHEA was not on the list of forbidden substances in 1997 is not correct: it is indeed listed as dehydroepiandrosterone under the heading 1 at the bottom of the List of Categories on page 2 among the androgenic anabolic steroids.

30. S. also claims that he may have ingested DHEA without his knowledge. Under Art. 2 of the AER, however, the participants in cycling races have the responsibility to ensure they do not "*avail themselves of forbidden agents*".

31. With regard to the reduction in the sentence imposed by the Doping Tribunal of the Danish NOC from two years to nine months commencing as of 12 December 1997, the Panel has taken into consideration the fact that the AER prescribes a maximum suspension of one year for the first offence as opposed to the maximum suspension of two years prescribed in the rules applied by the Danish NOC. It cannot be overlooked, however, that the reduction in the sentence is also justified by the disadvantages suffer by S. in formulating his defence as a result of the jurisdictional dissent between the UCI/DCU and the Danish NOC.

The Court of Arbitration for Sport hereby rules:

1. The January 19th, 1998 Decision of the Doping Tribunal of the National Olympic Committee and Sports Confederation of Denmark (Danmarks Idreaets-Forbund) as modified by the Decision of the Commission of Appeals and Arbitration of May 4th, 1998 shall be modified as follows:
 (a) The term of the sentence shall be reduced from two years to nine months commencing as of December 12th, 1997. Accordingly, the term of suspension ends August 11th, 1998.
 (b) The Court of Arbitration for Sport imposes a fine on the Respondent S. in the amount of CHF 2,000.00 (two thousand Swiss Francs).

(...)

TAB 22

TAS 2006/A/1119 Union Cycliste Internationale (UCI) v. Iñigo Landaluce Intxaurraga & Real Federación Española de Ciclismo (RFEC)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Jan **Paulsson,** Attorney-at-law, Paris, France

Arbitrators: Olivier **Carrard,** Attorney-at-law, Geneva, Switzerland
José Juan **Pintó,** Attorney-at-law, Barcelona, Spain

Ad-hoc Clerk: Shaparak Saleh, Attorney-at-law, Paris, France

in the arbitration between

The Union Cycliste Internationale (UCI), Aigle, Switzerland
Represented by Philippe Verbiest, Attorney-at-law, Leuven, Belgium

versus

Iñigo Landaluce Intxaurraga, Spain
Represented by Carmen Coello de Portugal Silva and Immaculada Herranz Perlado, Attorneys-at-law, Madrid, Spain

and

Real Federación Española de Ciclismo (RFEC), Madrid, Spain
Represented by José Antonio del Valle Herán, Attorney-at-law, Madrid, Spain

* * * * * * * * * *

I. FACTS

1. The Union Cycliste Internationale ***(UCI)*** is the association of national cycling federations. The purposes of the UCI are to direct, develop, regulate, control and discipline cycling. The antidoping system put in place by the UCI includes the Antidoping Rules ***(ADR)***, the list of prohibited doping classes of substances and methods, the list of international events subject to doping control and the list of accredited laboratories.

2. The Real Federación Española de Ciclismo ***(RFEC)*** is the Spanish national cycling federation. It has disciplinary regulations at the national level and is a member of the UCI.

3. Mr. Iñigo Landaluce Intxaurraga ***(Mr. Landaluce)*** is a Spanish rider in the elite category, holder of a license granted by the RFEC. At the time of the facts, he was a member of the Euskaltel cycling team and participated in the international road cycling race "Critérium du Dauphiné Libéré" which took place from June 5 to 12, 2005.

4. At the end of the June 11, 2205 stage, Mr. Landaluce underwent a doping control test. During sample collection, Mr. Landaluce indicated that he had taken triamcinolone by infiltration on March 21, 2005.

5. The A sample collected from Mr. Landaluce was analyzed by the French antidoping lab in Châtenay-Malabry ***(LNDD)***, a laboratory accredited by the World Anti-Doping Agency ***(WADA)***. Its analytical report dated July 17, 2005 revealed that *"the isotopic ratio mass spectrometric analysis indicates that Testosterone or one of its precursors was taken."* On July 28, 2005, the analytical report for the A sample was communicated to the RFEC, so that disciplinary proceedings would take place, in accordance with article 187 of the ADR.

6. On August 11, 2005, Mr. Landaluce requested, via the RFEC, a B sample analysis. He then asked that the B sample analysis, which was originally scheduled for September 14 and 21, 2005, be postponed to October 19, 2005. On October 21, 2005, the B sample analysis confirmed the presence of exogenous testosterone in the B sample.

7. By a fax dated October 27, 2005, the UCI communicated the B sample analysis results to the RFEC and asked the latter to proceed with the disciplinary proceedings.

8. On May 5, 2006, the RFEC, via the Comité Nacional de Competición y Disciplina Deportiva (national committee for competition and sport discipline/***CNCDD***) deemed that the conditions in which the analysis had been done revealed the existence *"of an incomplete process not in conformity with all applicable legal requirements which, therefore, could not totally guarantee the result."* The CNCDD determined that *"the legal principle,* 'in dubio pro reo' [giving the defendant the benefit of the doubt], [was] *fully applicable to the present case,"* shelved the case and acquitted Mr. Landaluce.

9. Mr. Landaluce did not participate in any cycling race between July 24, 2005 and May 15, 2006.

II. PROCEEDINGS

A. PARTIES' SUBMISSIONS

10. The UCI brought the case before the Court of Arbitration for Sport *(CAS)* in a statement dated June 26, 2006.

On July 17, 2006, the UCI filed its appeal brief requesting that the CAS:

"1) overturn the decision of the RFEC national committee for competition and sport discipline;

2) suspend Mr. Landaluce Intxaurraga for 2 years, in accordance with the ADR;

3) disqualify Mr. Landaluce Intxaurraga from cycling races in which he participated beginning June 11, 2005, including in particular the cycling race "Critérium du Dauphiné Libéré", until at least July 29, 2005.

4) order Mr. Landaluce Intxaurraga and the Real Federación Española de Ciclismo to pay the UCI the sum of 1,000 Swiss francs for the costs of managing the results (ADR article 245.2).

5) order Mr. Landaluce Intxaurraga and the Real Federación Española de Ciclismo to reimburse the UCI for the fee of 500 Swiss francs and all other costs, including a contribution to the UCI costs."

11. Mr. Landaluce filed his response on September 8, 2006, requesting that the CAS:

• declare that it has no jurisdiction on this case;

• order the UCI to pay the costs generated by the proceedings.

Mr. Landaluce made the subsidiary request that the CAS:

• dismiss the appeal filed by the UCI;

• order no sanction against him;

• order the UCI to pay costs.

Mr. Landaluce made the even more subsidiary claim that any sanction against him would have to be reduced by nine and a half months, the period during which he abstained from racing.

12. The RFEC filed its response on September 14, 2006, essentially claiming that:

• the CNCDD decision must be confirmed;

• the UCI appeal must be dismissed;

• the UCI must be ordered to pay costs, in accordance with article 282 of the ADR.

B. THE HEARING

13. The hearing took place on October 11, 2006, at the CAS Head office in Lausanne (The ***Hearing***), in the presence of the three members of the Court of Arbitration (the ***Panel***) and of the attorneys for the parties.

14. The Panel heard the following witnesses and experts:

• For the UCI:

- Doctor Martial Saugy, director of the Swiss antidoping laboratory ***(Dr. Saugy)***;
- Professor Jacques de Ceaurriz, LNDD director ***(Prof. De Ceaurriz).***

• For Mr. Landaluce:

- Dr. Douwe de Boer, a researcher at the Clinical Chemistry Laboratory at the Maastricht University Hospital and former director of the Doping Department of the Lisbon Analytical and Doping Laboratory ***(Dr. de Boer);***
- Dr. Detlef Thieme, a forensic toxicologist expert at the forensic toxicology department of the Munich Forensic Medicine Institute ***(Dr. Thieme);***
- Mr. Ignacio Colomer Hernández, a Law Professor at the Carlos III University in Madrid ***(Prof. Colomer),*** by videoconference.

C. ON MR. LANDALUCE ENTERING EXHIBITS 43 AND 43 BIS AND ON HEARING MR. MIGUEL MADARIAGA

15. On September 22, 2006, 14 days after filing his response, Mr. Landaluce submitted supplementary exhibits 43 and 43bis.

16. Since the UCI was opposed to said exhibits 43 and 43bis being entered, Mr. Landaluce indicated, by fax dated 2 October 2006, that he wanted Mr. Miguel Madariaga ***(Mr. Madariaga)*** to testify as a witness.

17. By fax dated 4 October 2006, the UCI opposed the testimony of Mr. Madariaga, since Mr. Landaluce's response did not mention this witness's testimony at all.

18. According to article R56 of the Code of Sports-related Arbitration:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement their argument,

nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the grounds for the appeal and of the answer."

19. During the hearing, the UCI indicated that it would agree to let Mr. Madariaga testify only if it could add to the debate a new piece of evidence received the day before. The Panel President asked that the evidence be forwarded to the RFEC and to Mr. Landaluce, to make them aware of it. Upon seeing the evidence, Mr. Landaluce dropped his request for Mr. Madariaga to testify.

20. In the absence of *"exceptional circumstances"* in the sense of article R56 of the Code of Sports-related Arbitration, the Panel President decided not to admit the new evidence and not to hear the witness.

III. ON THE COMPETENCE OF THE CAS

21. The organization of professional competitions assumes a clear distribution of competence between national and international authorities, on the one hand, and between the public and private sector, on the other hand.

22. There are domains, such as narcotics trafficking, in which the state requires, in the name of national sovereignty, control over any reprehensible behavior within the country, and refuses to let private associations take charge, including via a delegation of public service.

23. In contrast, discipline in the sports domain, which results in disqualifying the athlete or prohibiting the athlete from participating in future competitions, essentially reflects the will to eliminate unfair competition. This is why it is legitimately entrusted to sports authorities.

24. This is even truer when it comes to the exercise of sport at the international level, which cannot obey a multiplicity of potentially contradictory national rules.

25. To trust national laws alone with the management of international competitions would lead to an incoherent and non-egalitarian system, with the added risk that national authorities would sooner or later try to legislate as leniently as possible.

26. To alleviate such inconveniences, it suffices to ensure that the same sport discipline, when it takes place in an international context, is subject to the same rules for all competitors.

27. Mr. Landaluce tried to cause the Panel to believe that the legal situation in Spain would dictate a different solution. He claimed that the CAS is not competent to hear the UCI appeal against a CNCDD decision and indicates that only the Spanish Committee for Sports Discipline of the Superior Council of Spanish Sports ***(SCSD)*** is competent.

28. To support his claim, Mr. Landaluce invoked a certain number of texts which are reproduced below:

• Article 6 of the UCI Constitution:

"1. As members, the federations shall comply with the Constitution and Regulations of the UCI, as well as with all decisions taken in accordance therewith. Likewise, they shall have the Constitution, Regulations and decisions of the UCI complied with by all persons concerned.
2. The Regulations of the UCI shall be incorporated in the corresponding regulations of the federations.
3. The constitution and regulations of the federations shall not run counter to the Constitution and Regulations of the UCI. In case of divergence, only the Constitution and Regulations of the UCI shall apply. The constitution and the regulations of the federations must contain an express clause that in case of divergence with the Constitution and Regulations of the UCI, only the latter shall apply.
4. The foregoing paragraphs shall be applied in observance of the mandatory legal provisions in force in the country of the federation concerned."

• Article 35 of the Royal Decree 1835/1991 of 20 December 1991 relative to Spanish sports federations:

"The following questions cannot be subject to conciliation or arbitration: [...]

b) Those relative to the control of substances and methods prohibited in sport and the safety of the practice of sport ...]."

• Article 90.2 of the RFEC Constitution in its version following the decision of 11 October 2004:

"The following questions cannot be subject to conciliation: [...]

b) Those relative to the control of substances and methods prohibited in sport and the safety of the practice of sport ...]."

• Section 24 of the Spanish Constitution of 28 December 1978:

"1. All persons have the right to obtain effective protection from the judges and the courts in the exercise of their rights and legitimate interests, and in no case may there be a lack of defense.

2. Likewise, all have the right to the ordinary judge predetermined by law; to defense and assistance by a lawyer; to be informed of the charges brought against them; to a public trial without undue delays and with full guarantees; to the use of evidence appropriate to their defense; not to make self-incriminating statements; not to plead themselves guilty; and to be presumed innocent."

• Article 91.1 of the RFEC Constitution in its version following the decision of 11 October 2004:

"A commitment to undergo the conciliation proceedings will be required from the parties in the litigation. To this end, a written arbitration agreement must include an agreement that the arbitration award shall be final, and the obligation to accept the decision of one or more arbitrators, and the procedural rules."

• Article 84.1 of the Law 10/1990 of 15 October 1990 relative to Sport:

"The Spanish Committee for Sport Discipline is the national organ organically appointed to the Superior Council for Sports which, acting independently from the latter, resolves in final appeal, by administrative procedure, disputes on sports disciplinary questions that fall under its jurisdiction."

• Article 10 of the RFEC Constitution:

"1. Under the coordination and guardianship of the Superior Council for Sports, the RFEC will exercise the following public functions of administrative nature: [...]

f) Exercise sports disciplinary authority, according to the terms established by the Law on Sport, its particular provisions for development and its statutes and regulations."

• Article 59 of the Royal Decree 1591/1992 of 23 December 1993:

"The competence of the Spanish Committee for Sports Discipline extends to the following:

a. taking notice of and making decisions on appeals concerning the acts of sports entities with disciplinary authority when the remedies offered by sport procedures have been exhausted, according to the distribution of competence established by the Law on Sport and by the present royal decree."

29. Essentially, Mr. Landaluce claimed:

• that arbitration in matters of doping is prohibited in Spain;

• that the Spanish Constitution contains an inalienable right of access to justice and the courts. Mr. Landaluce indicated that he cannot be deprived of this constitutional right of access to justice by being authorized to appeal only before the CAS;

• that he never agreed to CAS arbitration and never signed any arbitration agreement. Mr. Landaluce considers that the mere fact that he holds a RFEC license can in no way constitute acceptance of the competence of the CAS;

• that the RFEC is a public authority exercising public disciplinary functions under the guardianship of a Spanish public entity. Therefore, Mr. Landaluce considers that the RFEC decisions should be subject to an administrative appeal before the CEDS, followed, as needed, by an appeal before the Spanish administrative judge;

• that according to article 6, item 4 of the UCI Constitution, the RFEC must respect Spanish legislation when it applies the UCI standards;

• that articles 242 and 280 of the ADR, which establish the exclusive competence of the CAS to take notice of the appeal against the decisions of national federations, are not applicable, according to article 6.4 of the UCI Constitution, since this exclusive competence would violate Spanish law;

• that the Central Administrative Litigation Court Number 7 of Madrid judgment of 8 June 2006 rendered in a Santiago Perez Fernandez case recognizes the possibility of appeal against the decisions of the CNCDD in a hierarchical sequence: before the SCSD followed, as needed, by an appeal before the Spanish administrative judge.

30. The UCI considers the CAS competent and the ADR applicable, on the basis of the following texts:

• Article 1.1.001 of the UCI Rules:

"The licence is an identity document confirming that its holder undertakes to respect the constitution and regulations and which authorise [sic] *him to participate in cycling events."*

• Article 1.1.004 of the UCI Rules:

"Anyone requesting a licence thereby undertakes to respect the constitution and regulations of the UCI, the UCI continental confederations and the UCI member Federations, as well as to participate in cycling events in a sporting and fair manner. He shall undertake, in particular, to respect the obligations referred to in article 1.1.023.

As from the time of application for a licence and provided that the licence is issued, the applicant is responsible for any breach of the regulations that he commits and is subject to the jurisdiction of the disciplinary bodies.

Licence holders remain subject to the jurisdiction of the relevant disciplinary bodies for acts committed while applying for or while holding a licence, even if proceedings are started or continue after they cease to hold a licence."

• Article 1.1.023 of the UCI Rules:

"[...] 2. I hereby undertake to respect the constitution and regulations of the International Cycling Union, its continental confederations and its national federations.
I declare that I have read or have had the opportunity to become acquainted with the aforesaid constitution and regulations.
I shall participate in cycling competitions or events in a sporting and fair manner.
I shall submit to disciplinary measures taken against me and shall take any appeals and litigation before the authorities provided for in the regulations. I accept the Court of Arbitration for Sport (CAS) as the sole competent body for appeals in such cases and under the conditions set out in the regulations.

I accept that the CAS shall be the court of last instance and that its decisions shall be definitive and without right of appeal. With those reservations, I shall submit any litigation with the UCI solely to the courts within whose jurisdiction the head offices of the UCI lie.
3. I agree to submit to and be bound by the UCI antidoping regulations, the clauses of the World Antidoping Code and its international Standards to which the UCI antidoping regulations refer and to the antidoping regulations of other competent bodies as per the regulations of the UCI and the World Antidoping Code provided that they comply with that Code.[...]"

• Article 5 of the UCI Rules Preliminary provisions:

"Participation in a cycling race, in whatever capacity, shall imply acceptance of all provisions of the Regulations applying thereto."

31. The UCI indicated that the review of the above articles together essentially means that:

• riders who hold licenses from UCI member federations are subject to the ADR;

• any person who applies for a license undertakes to respect the ADR and especially to be subjected to doping control tests and to the competence of the CAS as the court of last instance.

32. To support its claim, the UCI cited the fact that the decision of the CNCDD dated 5 May 2006, which is being appealed, was rendered by applying the ADR.

33. In addition, during the hearing, the UCI claimed that:

• the CAS should assess competence and arbitrability in disputes according to the Swiss federal law on private international legislation ***(LDIP)*** under whose terms (i) doping can be subject to arbitration, and (ii) arbitration clauses by reference are valid (article 178 of the LDIP);

• according to the CAS jurisprudence, the existence of a national law does not preclude the application of the regulations of the international federation (TAS 2005/A/872, arbitral award dated 30 January 2006, UCI /Federico Muñoz Fernandez and Federación Colombiana de Ciclismo);

• the Spanish legislation invoked by Mr. Landaluce would be intended to apply only in Spain, as shown in the following:

(i) article 1.3° of Royal Decree 1835/1991 dated 20 December 1991 on Spanish sports federations, according to which the scope of competence of Spanish sports federations would be limited to within the country;
(ii) the preamble of Law 10/1990 dated 5 October 1990 on sport, according to which the object of the law would be to define the legal framework applicable to the practice of sport within Spain.

• article 7 of the Royal Decree 255/1996 dated 16 February 1996, according to which the sanctions imposed in application of the antidoping rules of any federation, be it national,

international or autonomous, have effects in all of Spain, shows that sanctions can be imposed by federations other than RFEC and have effects within Spain;

• to admit, as the sole appeal procedure against CNCDD decisions, an appeal before the SCSD would be equivalent to depriving the UCI of any right of oversight on the decisions arising from the national federation, to the extent that the UCI would not be able to appeal within Spanish jurisdiction.

34. In its writings and during the hearing, the RFEC indicated that it was won over to the UCI's interpretation, with regard to the competence of the CAS. In addition, the RFEC indicated that it was a private entity *"wearing two hats"* exercising, on a case by case basis, missions of a public or private nature. The RFEC stated that in the context of international competitions, such as the case in point, it exercises a mission of a private nature.

35. During the hearing, Prof. Colomer claimed the following:

• the granting of a license by the RFEC constitutes an administrative act;

• the power of sanction of the RFEC is applied in the context of the exercise of a public function;

• the CAS is not competent because the sanction imposed by the CNCDD is an administrative act;

• the fact that arbitration is prohibited in matters of doping is imperative for the parties, with no possible exception;

• the Spanish Constitution prevails over any international treaty;

• any decree contrary to the Spanish Constitution is unconstitutional;

• article 7 of Royal Decree 255/1996 dated 16 February 1006 is unconstitutional.

36. The Panel, aware of the fact that the present dispute illustrates the tension that can exist between an athlete's national law and the regulations of the international federation to which he is subjected, recalls that the UCI is the association of national cycling federations, and that the purposes of the UCI are to direct, develop, regulate, control and discipline international cycling, particularly in matters of doping. As for Mr. Landaluce, he is a professional cyclist in the elite category, holder of a license under the terms of which he accepted to be subject to the UCI regulations.

37. Mr. Landaluce's application for a license certainly shows that the model used by the RFEC to apply for a license does not conform to the UCI Rules. However, articles 2 and 3 of the application for a license signed by Mr. Landaluce indicates that its holder commits himself to respect the current Spanish legislation, the Constitution of the UCI and of its confederations as well, and that he agrees to be subject to doping control tests in the conditions set out in article 1.1.023 of the UCI Rules as well as to the competence of the CAS which is explicitly

set out. The RFEC did indicate, during the Hearing, that the fact of applying for a RFEC license is in itself equivalent to accepting the competence of the CAS, even in the absence of an explicit clause to this effect. The Panel considers that by requesting a license from the RFEC, Mr. Landaluce subjected himself to the competence of the CAS, as well as to the UCI Rules.

38. Some might think that it would have been preferable for the application for a license to mention specifically that the parties agreed to CAS arbitration. In this regard, the Panel emphasizes that elite riders are not lay persons, such as consumers might be, but informed athletes undoubtedly aware of the existence of the CAS and of its competence in matters of doping. Therefore, the competence of the CAS as set out in article 1.1.023 of the Cycling Sport Rules can in no way be a surprise to a person who applies for a license. To require that, in addition to the elements listed in paragraph 37, a license application must mention explicitly the competence of the CAS in order for the CAS to be competent, would be an excessive formality and a demand not required by the jurisprudence of the Swiss federal court.

39. Mr. Landaluce's argument that article 6 paragraph 4 of the UCI Constitution orders the RFEC to apply Spanish law and forbid CAS arbitration doesn't do much to convince the Panel. In fact, article 6 of the UCI Constitution is aimed only at national federations. The first three paragraphs of this article require these federations to harmonize their rules by reiterating the UCI rules. The fourth paragraph of article 6 of the UCI Constitution simply indicates that this harmonization must take into account potential requirements applicable in the federation's country. Consequently, article 6 paragraph 4 of the UCI Constitution explicitly refers to the three preceding paragraphs and cannot be taken out of context. Thus Article 6 of the UCI Constitution addresses only national federations, to indicate to them the procedure to follow to harmonize their rules, and cannot be invoked by a cyclist in order to escape the application of the UCI Rules, and by doing so, the competence of the CAS.

40. After all, no provision of Spanish law excludes arbitration. This is certainly not the case with article 24 of the Spanish Constitution. To be convinced, it suffices to compare the scope of this text to that of article 6 paragraph 1 of the European Convention on Human Rights ***(ECHR)*** which states that *"everyone is entitled to a fair and public hearing [...] by an independent and impartial tribunal established by law."* The European Convention on Human Rights decided in the case of X./RFA dated 5 March 1962, that the insertion of a compromissory clause in a contract was equivalent to renouncing the benefit of the ECHR and that no stipulation of the ECHR forbade such a renunciation. Unless otherwise demonstrated, article 24 of the Spanish Constitution, exactly like article 6 paragraph 1 of the ECHR, in no way forbids arbitration. In fact, the competence of the CAS does not deprive Mr. Landaluce of his right to have access to justice as set out by the Spanish Constitution, since arbitration is a form of exercise of this right in an international matter.

41. Finally, the Panel considers that the Spanish provisions invoked by Mr. Landaluce are intended to apply only in the context of national cycling competitions, and cannot be an obstacle to applying the UCI Rules or the competence of the CAS. To decide otherwise would lead to a veritable race for the most lenient national legislation.

42. Indeed, international sports federations such as the UCI must have a right to oversee the decisions of national federations in matters of doping. This right of oversight of the UCI's, which manifests itself by the ability to appeal the decisions of national federations before the CAS, is there to reduce the risk that an international competition would be biased by a national federation that would refrain from sanctioning its members.

43. Therefore, Mr. Landaluce's argument that the sole recourse against the decisions of the CNCDD would be an appeal before the SCSD cannot win the support of the Panel.

44. Likewise, Mr. Landaluce's argument contesting the competence of the CAS because anti-doping rules would be trusted to a public authority is flawed. In fact, a review of CAS jurisprudence indicates that the power of international federations such as the UCI is exercised even when doping control and sanctions are trusted, as in the case in point, to a public authority.

45. The power of international federations is there to eliminate unfair competition and any hunt for the most lenient legislation. It tends to subject all athletes to equal treatment, by seeing to it that certain national federations won't remain passive in view of offenses committed by their country's athletes. Thus, in a doping case involving swimmers in 1997, the CAS recognized as an imperative necessity for international federations to be able to review the decisions of national federations in doping cases. This is to prevent the risk that international competitions would be biased, because a national federation might be tempted to pronounce sanctions that would be too lenient (TAS 96/156, arbitral award dated 10 October 1997, F. / FINA).

46. Later on, another CAS panel had the opportunity to extend this jurisprudence to sanctions pronounced by national public authorities, in B. v. International Judo Federation on 17 March 1999 (TAS 98/214, arbitral award dated 17 March 1999, B./Fédération Internationale de Judo). This was the case of a positive doping control test sanctioned by a suspension imposed by an order of the French Minister of Sports. Indeed, a 1989 French law gave said minister the power to substitute his decision to any punitive measure taken by national sports federations. In the case in point, the French Federation had imposed a two-year suspension, of which one year was stayed, and the ministry's order substituted a simple one-year suspension. However, the latter sanction was not in conformity with the rules of the International Judo Federation ***(IJF),*** which brought the case before the CAS. The latter ordered a 15-month suspension.

47. In that arbitral award, the arbitrators evoked the problem that is at the heart of the present dispute:

"The panel's opinion is that the latitude granted by this jurisprudence to international federations must be extended to the cases in which the doping control procedure and doping sanction are not handled by a national federation, according to sport rules, but by a public authority applying a national law, as in the case in point, or, in relevant cases, based on an international convention.

The power to extend, at the international level, national decisions relative to doping, no matter what authority rendered them, is justified not only to prevent the risk that certain federations or government entities would engage in unfair competition of the unhealthiest sort, by failing to sanction their athletes as rigorously and severely as other federations and/or their international federations, but also to reach the goal that each international federation must try to achieve, which is to make all participants of the same sport respect an equal and consistent treatment."

48. Therefore, the provisions of the Spanish law that are referred to do not allow to conclude to the lack of competence of the CAS. This is what the CAS determined on several occasions, particularly in cycling in the Muñoz case (TAS 2005/A/872, arbitral award dated 30 January 2006, UCI /Federico Muñoz Fernandez and Federación Colombiana de Ciclismo):

"The panel is prepared to accept that as a matter of Colombian Law it was possible for Mr. Muñoz to appeal to the General Disciplinary Committee of the Colombian National Olympic Committee. However, to do so was a breach of his contract with the UCI. At best, the decision of the General Disciplinary Committee could only have an effect within Colombia. It would not entitle Mr. Muñoz to participate in cycle races organized under the auspices of the UCI, or to avoid the UCI's disciplinary code." [in English in the original document]

49. The authority of States and that of international sport are not in competition; on the contrary, their roles are complementary. The state authority is limited to controlling the behavior of persons subject to its jurisdiction, whereas the international federation manages the competitions that fall under its jurisdiction. One and the same behavior can lead to a penal sanction in a given place, without leading to the cyclist being sanctioned at the international level. Likewise, a behavior can lead to no penal sanctions while it can generate an exclusion from sports contests because it damages the fairness of competition.

50. This complementarity between state and international sport authorities can take on a particular form when a public authority substitutes itself to the national federation to decide on sanctions—as was the case in the above IJF case, or in the case in point. National sovereignty, as expressed when a sport disciplinary measure is taken by a national authority, applies in principle only within the country. However, the national decision can be replaced by a decision of the international authority—the CAS—in order to ensure the necessary legal uniformity. It is certainly theoretically conceivable that the State would impose its national decisions in international competitions taking place within the country, disregarding the international authority. Such a behavior, however, would go against all the efforts made in the fight against doping at the international level, and could lead to excluding that State from organizing international competitions. It would be surprising for a State to want to put itself in such a position, and there is nothing in the texts invoked in the present case that would suggest that Spain would have adopted this position. Quite the contrary, the preamble of the Royal Decree 255/1996 dated 16 February 1996 clearly reflects the fact that Spain is concerned with whether its standards conform to international standards:

"In accordance with article 76.1.d) of the Law on Sport and in accordance with the criteria of international sports standards, the present Royal Decree identifies the behaviors that constitute doping infractions and establishes the relevant sanctions [...]."

51. Far from supporting Mr. Landaluce's claim, the Royal Decree 255/1996 dated 16 February 1996 that he invokes only confirms the reasoning developed above. Indeed, article 7 of this Decree explicitly recognizes that the sanctions imposed by an international federation have effects on all of Spain. The contrary would have been surprising, to say the least.

52. In view of the above, the Panel concludes that it is competent in the present litigation, in accordance with articles 280 to 291 of the ADR.

53. This is in fact not contested by the RFEC which has, during the entire proceedings, recognized the competence of the CAS and the applicability of the ADR, which were explicitly referred to in the CNCDD decision of 5 May 2006, which is the subject of the present appeal.

IV. ADMISSIBILITY

54. Article 285 of the ADR states that the UCI appeal brief must be filed with the CAS within a month after receiving the complete dossier of the national federation hearing. However, when the UCI has not requested the dossier within 15 days after receipt of the decision, as per article 247 of the ADR, the deadline for appeal is one month from receipt of the complete decision.

55. In the case in point, the UCI received the CNCDD decision on 9 May 2006 and requested the complete dossier on 11 May 2006. The complete dossier was received by the UCI on 26 May 2006. The appeal brief was sent on 26 June 2006, by the deadline.

V. MERITS

A. GENERAL PRINCIPLES

56. According to article 16 of the ADR:

"The UCI and its National Federations shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI or its National Federation has established an anti-doping rule violation to the comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Rider or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability."

57. On the methods of establishing facts and presumptions, article 18 of the ADR sets out the following:

"WADA-accredited laboratories or as otherwise approved by WADA are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standards for laboratory analysis. The Rider may rebut this presumption by establishing that a departure from the International Standard occurred.

If the Rider rebuts the preceding presumption by showing that a departure from the International Standard occurred, then the UCI or the National Federation shall have the burden to establish that such departure did not cause the Adverse Analytical Finding."

In other words, there is a refragable presumption that WADA-accredited laboratories conduct analyses in accordance with prevailing and acceptable standards of scientific practice, in accordance with the International Standard for Laboratories (ISL). In the event that the rider demonstrates a departure from the ISL, it is then the UCI's burden to demonstrate that this departure is not at the origin of the adverse analytical finding. Therefore these rules must be applied to determine whether Mr. Landaluce has established that there were departures, and if so, whether the UCI can demonstrate that the departure cannot have caused the adverse finding.

58. According to article 15.1 of the ADR:

"The following constitute anti-doping rule violations:

1. *The presence of a Prohibited Substance or its Metabolites or Markers in a Rider's bodily Specimen.*

1.1 *It is each Rider's personal duty to ensure that no Prohibited Substance enters his body. Riders are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Rider's part be demonstrated in order to establish an anti-doping violation under article 15.1."*

59. The substance testosterone is an endogenous androgenic anabolic steroid, a prohibited substance listed in the 2005 Prohibited List in class S1.1.b. The prohibited lists states the following:

"Where a Prohibited Substance (as listed above) is capable of being produced by the body naturally, a Sample will be deemed to contain such Prohibited Substance where the concentration of the Prohibited Substance or its metabolites or markers and/or any other relevant ratio(s) in the Athlete's Sample so deviates from the range of values normally found in humans that it is unlikely to be consistent with normal endogenous production. A Sample shall not be deemed to contain a Prohibited Substance in any such case where the Athlete proves by evidence that the concentration of the Prohibited Substance or its metabolites or markers and/or any other relevant ratio(s) in the Athlete's Sample is attributable to a physiological or pathological condition. In all cases, and at any concentration, the laboratory will report an Adverse Analytical Finding if, based on any reliable analytical method, it can show that the Prohibited Substance is of exogenous origin.

If the laboratory result is not conclusive and no concentration as referred to in the above paragraph is found, the relevant Anti-Doping Organization shall conduct a further investigation if there are serious indications, such as a comparison to reference steroid profiles, for a possible Use of a Prohibited Substance.

If the laboratory has reported the presence of a T/E ratio greater than four (4) to one (1) in the urine, further investigation is obligatory in order to determine whether the ratio is due to a physiological or pathological condition, except if the laboratory reports an Adverse Analytical Finding based on any reliable analytical method, showing that the Prohibited Substance is of exogenous origin."

B. APPLICATION OF THE GENERAL PRINCIPLES TO THE PARTICULAR CASE

60. In this particular case, the LNDD used, as an analysis method, GC/C/IRMS, analysis by isotopic ratio mass spectrometry. The LNDD analytical report states the presence of exogenous testosterone. The A sample had a T/E ratio of 9.2, greater than the limit of 4 established by WADA. The LNDD B sample analytical report confirmed the A sample analysis result.

61. Since the LNDD conducted analyses whose results are positive, it is Mr. Landaluce's burden to demonstrate that there was a departure from the ISL in order to reverse the presumption that the analyses were conducted in accordance with prevailing and acceptable standards of scientific practice. As justifiably recalled by UCI during the hearing, Mr. Landaluce may not simply indicate that *"something could potentially be wrong"* [quote in English in the original document], but must indeed prove that there was a violation of the ISL.

62. To do so, Mr. Landaluce contested the validity of the LNDD analyses, invoking failures and irregularities during the process. He claimed that there irregularities *"invalidate"* the analysis results and indicated that *"these results will never be considered to prove that a fault was committed that can be sanctioned."*

63. To this end, Mr. Landaluce emphasized that he relied on the observations of Dr. de Boer and of Mrs. Luisa Lurueña Sánchez, a pharmacist and expert in the analysis and quality control of medicines and drugs.

64. Mrs. Luisa Lurueña Sánchez noted the following:

"The documentation provided is insufficient to demonstrate the abuse of testosterone or a precursor.
Given the bad, weak and inconsistent analytical documentation shown to demonstrate the abuse of testosterone or analogs in this sample, the athlete's innocence can be defended."

65. In support of his claims, Mr. Landaluce also provided numerous reports by Dr. de Boer who claimed that several irregularities were committed by the LNDD and emphasized that the ISL was not met. In his report dated 12 March 2006, Dr. de Boer stated the following in particular:

"The WADA laboratory in Châtenay-Malabry made no mistake with regard to the chemical analysis, but it did not meet, in several ways, the WADA international standards for analytical Laboratories (ISL, International Standards for Laboratories). Therefore, several nonconformities occurred, which, among other things, resulted in the "A" and "B" sample analysis being far from complete."

66. Mr. Landaluce invoked six departures from the ISL allegedly committed by the laboratory. Four of the alleged departures have to do with scientific interpretation by the laboratory, whereas the other two have to do with the proceedings initiated by him. The Panel must examine the alleged irregularities invoked by Mr. Landaluce to determine whether the LNDD met the ISL.

1. Alleged failures concerning scientific interpretation by the LNDD

a) The argument that the documentation does not allow another analyst to evaluate the analyses and interpret data (point 5.2.6.1 of the ISL)

67. According to point 5.2.6.1 of the ISL:

"The Laboratory must have documented procedures to ensure that it maintains a coordinated record related to each Sample analyzed. In the case of an Adverse Analytical Finding, the record must include the data necessary to support the conclusions reported (as set forth in the Technical Document, Laboratory Documentation Packages) In general, the record should be such that in the absence of the analyst, another competent analyst could evaluate what tests had been performed and interpret the data."

68. Dr. de Boer declared that he could not evaluate different aspects of the analyses because of a lack of information and indicated that the A and B sample reports did not contain information allowing the identification of the steroids in question.

69. As for Dr. Saugy, he indicated that the information allowed the identification of the steroids in question. Indeed, in his declaration dated 14 July 2006, Dr. Saugy indicated that *"after careful and reasonable review of the documentation packages, I have determined that all the elements allowing an evaluation of the dossier are included in it."*

70. The Panel notes that there is a disagreement between the experts. Whereas Dr. Saugy found that the documentation made it possible to identify the steroids in question, Dr. de Boer considered that the elements at his disposal were insufficient. The arbitrators consider that Dr. Saugy's testimony is plausible and that Dr. de Boer's demonstration does not invalidate Dr. Saugy's analysis.

71. Therefore, the Panel's opinion is that Mr. Landaluce has not demonstrated a violation of point 5.2.6.1 of the ISL and that he has not succeeded in reversing the presumption according to which the LNDD analysis was done in accordance with prevailing and acceptable standards of scientific practice, as per point 5.2.6.1 of the ISL.

b) the argument that the substance found is a threshold substance and that the uncertainty of 0.8 adopted by the LNDD would be insufficient (point 5.4.4.1.3 of the ISL)

72. According to point 5.4.4.1.3 of the ISL:

"For both Non-threshold and Threshold Substances, the Laboratory will be required to meet a Minimum Required Performance Limit for detection, identification, and demonstration that a substance exceeds the threshold (if required)."

73. Dr. de Boer's opinion was that the uncertainty value of 0.8 presented by the LNDD was insufficient and should be 1.35. In addition, he indicated that the fact that an uncertainty index was given shows that the LNDD considered the substance to be a threshold substance to the extent that uncertainty is taken into account only for threshold substances. Dr. de Boer concluded that there was a departure from point 5.4.4.1.3 of the ISL.

74. As for Prof. de Ceaurriz and Dr. Saugy, their opinion was that this value, used by many laboratories, is in compliance with point 5.4.4.1.3. of the ISL. In his declaration dated 14 July 2006, Dr. Saugy did not consider it to be a measurement of a threshold substance, but a confirmation method based on quantitative measurements, whose goal is to demonstrate the qualitative origin of the product ingested.

75. The UCI argued that it is not a threshold substance to the extent that the mere presence of exogenous testosterone suffices. The isotopic analysis aims solely to demonstrate the exogenous nature of the product, without any concern for its quantity.

76. To support its allegation, the UCI referred to point 5.4.4.3 of the ISL which indicates the following:

"In most cases an identification of a Prohibited Substance, its Metabolite(s) or Marker(s), is sufficient to report an Adverse Analytical Finding. Thus, quantitative uncertainty as defined in ISO/IEC 17025 does not apply. In the identification of a compound by GC/MS or HPLC/MS, there are qualitative measures that substantially decrease the uncertainty of identification.

In the case of a Threshold Substance, uncertainty in both the identification and the finding that the substance is present in an amount greater than the threshold concentration must be addressed."

77. In his declaration dated 14 July 2006. Dr. Saugy noted that the WADA Technical Document TD2004EAAS indicates that the result demonstrates the administration of an exogenous steroid when the metabolite value differs significantly by 3‰ or more from that of the endogenous reference chosen. Dr. Saugy declared that in the case in point, the analysis revealed, for both the A and B samples, a difference significantly greater than 3‰, namely 4.85‰ for the A sample and 4.76‰ for the B sample, between the endogenous reference and the metabolite found in the testosterone.

78. The Panel notes that there is no precise method in this matter and that the experts present at the Hearing did not reach agreement on an uncertainty value to take into account for isotopic analysis.

79. The Panel's opinion is that Mr. Landaluce has not reversed the presumption that the LNDD conducted its work in accordance with prevailing and acceptable standards of scientific practice. Indeed, the experts cited by Mr. Landaluce, although they demonstrated their disagreement with the calculation method adopted by the LNDD, have not reversed the presumption that the analyses were in compliance with point 5.4.4.1.3 of the ISL. Therefore, the Panel finds that Mr. Landaluce has not proved that there was a departure from point 5.4.4.1.3 of the ISL.

c) The argument that the requested information was not provided to the cyclist or to his expert (point 5.4.7.3 of the ISL and of technical documents TD2004EAAS and TD2003IDCR)

80. Mr. Landaluce argued that he did not receive the information requested several times, by him as well as by Dr. de Boer, which would have made it possible to evaluate the analysis done by the LNDD.

81. The UCI indicated that RFEC correspondence dated 22 November 2005 shows that Mr. Landaluce received the totality of the documents relative to the A and B sample analyses. The UCI also argued that correspondence containing the requested information was sent directly by the LNDD to the RFEC. This correspondence was received safely by the RFEC which stamped it, despite the fact that the CNCDD decision indicates that no response from the LNDD was received.

82. In addition, Dr. de Boer indicated that he received on 29 August 2006 a document containing the evaluation of the retention times for the identification of the steroids in question in the B sample analysis. However, he noted that no information was communicated to him regarding mass spectral and identification data on the steroids involved in the A sample analysis. Therefore, Dr. de Boer's opinion was that there was a departure from point 5.4.7.3 of the ISL and technical documents TD2004EAAS and TD2003IDCR.

83. The Panel notes once more a divergence of opinion between the experts present at the Hearing. Indeed, Dr. Saugy indicated that the information necessary for the identification of these products were provided by the LNDD. This analysis by an expert who enjoys non-negligible experience in this field is quite plausible. Therefore, the Panel considers that Mr. Landaluce has not reversed the presumption that the LNDD complied with point 5.4.7.3 of the ISL and technical documents TD2004EAAS and TD2003IDCR.

d) The arguments that the values do not significantly differ from 3 delta units or more and that three aliquots should have been analyzed (technical document TD2004EAAS)

84. According to the technical document TD2004EAAS:

"The results will be reported as consistent with the administration of a steroid when the 13C/12C value measured for the metabolite(s) differs significantly i.e. by 3 delta units or more from that of the urinary reference steroid chosen. In some Samples, the measure of the 13C/12C value of the urinary reference steroid(s) may not be possible due to their low concentration. The results of such analyses will be reported as "inconclusive" unless the ratio measured for the metabolite(s) is below -28‰ based on non-derivatised steroid."

85. According to Dr. de Boer, this technical document requires that the values differ significantly from three delta units or more. In addition, since this is a threshold value, the ISL requires that three aliquots be analyzed, or as in the case in point, when only one aliquot is available, that it be analyzed three times.

86. As for Prof. de Ceaurriz and Dr. Saugy, their opinion was that triplicate sample measurements are not necessary and that such a requirement, which does not even exist, would on the contrary be problematic when the necessary urine volume is not available. They indicate that this is not a threshold analysis requiring the analysis of several samples.

87. The Panel notes once more that there is a difference in interpretation between the experts and considers that Mr. Landaluce has not reversed the presumption that the LNDD complied with technical document TD2004EAAS.

2. Alleged failures concerning the procedure followed by the LNDD

a) the argument that deadlines were not met (points 5.2.4.3.2.1 and 5.2.6.5 of the ISL)

88. Dr. de Boer claimed that the LNDD did not meet the deadlines described by points 5.2.4.3.2.1 and 5.2.6.5 of the ISL.

89. According to point 5.2.4.3.2.1 of the ISL:

"In those cases where confirmation of a Prohibited Substance, Metabolite(s) of a Prohibited Substance, or Marker(s) of the Use of a Prohibited Substance or Method is requested in the "B" Sample, the "B" Sample analysis should occur as soon as possible and should be completed within thirty (30) days of notification of an "A" Sample Adverse Analytical Finding."

90. According to point 5.2.6.5 of the ISL:

"Reporting of the "A" Sample results should occur within ten (10) working days of receipt of the Sample. [...] The reporting time may be modified by agreement between the Laboratory and the Testing Authority."

91. Dr. de Boer emphasized that the A sample results, which should have been reported within 10 working days of 14 June 2005, the date of receipt of said sample by the LNDD, were reported only 23 days later, i.e., 17 July 2005. Dr. de Boer also indicated that the B sample analysis was not done by the deadline of thirty days after notification of the A sample adverse analytical finding. Indeed, the A sample analysis result notification occurred on 28

July 2005. The LNDD proposed the date of 11 September 2005 for the opening of the B sample, a date which, upon request by Mr. Landaluce, was postponed to 21 September 2005, then rescheduled for 19 October 2005.

92. The UCI recognized that deadlines were not met, invoking *"laboratory overload, the complexity of the analysis and the vacation period."*

93. During the Hearing, the group of experts present declared that the delays had no effect on the analyses results.

94. In accordance with the rules relative to the method of establishing facts and presumptions, the Panel finds that Mr. Landaluce succeeded in reversing the presumption that the LNDD complied with points 5.2.4.3.2.1 and 5.2.6.5 of the ISL by demonstrating the existence of a departure. Such a demonstration, however, has only a purely theoretical effect, since the group of experts present at the Hearing observed that the departure observed could not be at the origin of the positive results of the A and B sample analysis. Therefore, the Panel concludes that Mr. Landaluce's adverse finding does not result from the departures from 5.2.4.3.2.1 and 5.2.6.5 of the ISL.

b) The argument that the analyst who did the analysis of the B sample was also involved in the analysis of the A sample (point 5.2.4.3.2.2 of the ISL)

95. According to point 5.2.4.3.2.2 of the ISL:

"The "B" Sample confirmation must be performed in the same Laboratory as the "A" Sample confirmation. A different analyst must perform the "B" analytical procedure. The same individual(s) that performed the "A" analysis may perform instrumental set up and performance checks and verify results."

96. Mr. Landaluce used as a basis the report of Dr. de Boer to claim that the analyst who did the analysis of the B sample was also involved in the analysis of the A sample, in violation of point 5.2.4.3.2.2 of the ISL.

97. Dr. de Boer indicated that this standard prohibits the same analyst from touching/manipulating both the A and B samples *("touching the sample must be separate")*. [quote in English in the original document]

98. In this particular case, the report dated 11 June 2005 reveals that the analyst who did the analysis of the B sample did the following tasks in the A analysis: *package* [in English in the original document] at 4 degrees C, redissolve in acetonitrile and transfer to a vial, evaporate, redissolve in hexane and inject in the GC-MS.

99. The Panel President asked Dr. Saugy whether point 5.2.4.3.2.2 of the ISL prohibited the same analyst from touching/manipulating both the A and B samples. Dr. Saugy acquiesced in the following terms: *"I agree that it excludes any manipulation of the sample"*.

100. The Panel President then interrogated Prof. de Ceaurriz to know whether the same analyst had touched/manipulated the A and B samples. Prof. de Ceaurriz replied:
"Yes. It is clearly indicated. If you want, it is indicated in our chain of [custody]. There is no ambiguity on this. [The analyst] touched the samples in the A and touched the totality of the samples in the B. There is no ambiguity on this."

101. The Panel President then asked whether that constituted a departure from the ISL, to which Prof. de Ceaurriz replied:
"Indeed. It is even openly in the laboratory documents. [...] with respect to the standard, that is true, she had contact with the sample".

102. Prof. de Ceaurriz indicated that there had been 10% of *"overlap between the two persons for workload reasons".*

103. The group of experts present at the Hearing thus recognized that the analyst who participated in the two analyses did not limit herself to *"performing instrumental set up and performance checks and verify results"* and determined that there had been a departure from point 5.2.4.3.2.2 of the ISL.

104. In accordance with the rules relative to the method of establishing facts and presumptions, the Panel determines that Mr. Landaluce succeeds one more time in reversing the presumption according to which the LNDD would have acted in conformity with point 5.2.4.3.2.2 of the ISL, by demonstrating the existence of this departure. The consequences this time are decisive.

105. It was not demonstrated that this was not at the origin of the adverse finding, nor that it was. It was however incumbent upon the UCI, according to article 18 of the UCI Anti-doping Rules, to demonstrate that the departure from the ISL was not at the origin of the adverse finding, but this was not done. The UCI merely indicated in its appeal brief that:

"And even is there had been a departure—quod non—this couldn't have led to the adverse analytical finding, unless it is established that [the analyst] committed an error which caused the adverse analytical finding, quod non."

106. Also during the Hearing, the UCI simply noted:

"As for the departures from the ISL which were brought up, I believe I can conclude that if they took place, they are not significant and are certainly not at the origin of the result."

107. It was indeed for the UCI to demonstrate that the failure to meet point 5.2.4.3.2.2 of the ISL was not at the origin of the adverse finding. To the extent that the UCI did not succeed in doing so, the Panel's only possible conclusion is to exonerate Mr. Landaluce.

108. It is true that a decision pronounced on this question of the double involvement of the same analyst in examining A and B samples, in the case of Wang Lu Na and others versus FINA (TAS 98-208, decision dated 22 December 1998, Wang Lu Na and others versus

FINA) upheld the suspension of four swimmers. However, what that decision brings to the needs of present case is very marginal, for three reasons: Firstly, the applicable regulation is different. Then, the decision expressly indicates *(paragraph 5.22)* that the role played by the analysts in question was not clearly established: the arbitrators declared that they were *"unpersuaded"* by the argument according to which the analysts *"were involved in anything other than the tests of the controls"* as opposed to *"A samples themselves"*. [quotes in English in the original document] In contrast, in the case in point, as demonstrated previously, the analysts who manipulated the A and B samples are one and the same. Finally, the swimmers' representatives had, by their signatures, recognized that the procedure described by the FINA regulation had been respected by the laboratory. In the case in point, the UCI did not follow up on presenting evidence that Mr. Landaluce had approved the procedure that was followed. [French grammar questionable]

109. Although aware of the imperatives of costs and organization faced by laboratories, the Panel must watch over the respect of fundamental rules, considering the implications that its decision could have on the reputation, and therefore, the career of the athlete, if a disciplinary sanction were to be pronounced against him.

110. The Panel is well aware that the standard which requires that a different analyst analyze the B sample has been the subject of intense discussions between WADA and laboratory directors. The latter claim that this rule unreasonably complicates laboratory operations, and yet it has not been demonstrated that it brings additional protection to the athletes tested. Indeed it would be unrealistic to require that the same analyst conduct the totality of an analysis from beginning to end. In fact, the analyses for certain substances can last several days during which processes are mechanically carried out. The analysts carry out numerous tasks, shifting from one to the other, so that several analyses can be done simultaneously. If it is conceivable to require of a large laboratory with a staff of 50 to 100 to organize the work so as to exclude from the analysis of the B sample the analyst who analyzed the A—even though this constitutes a non-negligible complication factor which the laboratories would rather be spared—such a requirement would constitute a major complication factor for a laboratory of smaller size.

111. It is virtually impossible to prove a negative fact, in this case that the involvement of the same analyst in both analyses did not affect the result. Therefore certain laboratory directors consider this rule too rigid; in reality, sufficient protection of the athletes is already ensured in that the system of identification of samples by codes ensures that their identity is not known to the analysts.

112. This reasoning, although rational and plausible, fails before the CAS for a very simple reason: the arbitrators do not create the rules, the apply them. This is all the more true because the authors of the antidoping regulation kept the rule which requires another analyst for the analysis of the B sample, even though they had heard the comments of the laboratory directors. The rules can certainly be modified or refined, but such is not the role of the CAS.

113. The applicable rule is clear and devoid of flexibility. The CAS arbitrators' mission is not to modify the rules nor is their mission to appropriate discretionary power when no text allows them to do so.

114. Note in passing that if cases are rare where the CAS exonerated the athlete based on the hypothesis that a laboratory failed to respect the protocols, this is explained by the fact that the disciplinary authorities know how strict the arbitrators are in this domain and do not charge athletes—even in very suspect cases—when the analyses have not been done according to the rules.

115. The Panel does emphasize the LNDD's staff's good faith, which is not in question. The arbitrators have no reason to doubt the explanation given by Prof. De Ceaurriz according to which the *"overlap"* of operations done by the analysts was due to work overload within the LNDD. Furthermore, he pointed out that ill-intentioned accomplices would have covered up their actions by writing reports on analyses in such a way that they couldn't potentially be blamed for any failure. In this case, it is exactly the contrary; the athlete wins based on laboratory information that was communicated honestly.

116. Note that paragraphs 95 to 115 of this decision were adopted by the majority of the arbitration Panel, according to article R59 of the Code, and that the minority opinion of the arbitrator who disagreed was duly considered and debated during the deliberations.

117. In any case, the present decision does not constitute a declaration of innocence of Mr. Landaluce with regard to the antidoping rules. Mr. Landaluce merely benefits from a rule that is formal and yet fundamental, which aims to guarantee the rights of persons subject to doping control tests.

VI. COSTS

118. For disciplinary cases of an international nature ruled in appeal, such as the case in point, article R65 of the Code states the following:

"Subject to Articles R65.2 and R65.4, the proceedings shall be free.
The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of the CAS are borne by the CAS.
Upon submission of the statement of appeal, the Appellant shall pay a minimum Court Office fee of Swiss francs 500.— without which the CAS shall not proceed and the appeal shall be deemed withdrawn. The CAS shall in any event keep this fee.
The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.
If all circumstances so warrant, the President of the Appeals Arbitration Division may decide to apply Articles R64.4 and R64.5, 1st sentence, to an appeals arbitration, either ex officio or upon request of the President of the Panel."

119. Articles R64.4 and R64.5 of the Code state the following:

"At the end of the proceedings, the Court Office shall determine the final amount of the cost of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties."
"The arbitral award shall determine which party shall bear the arbitration costs or in which proportions the parties shall share them. As a general rule, the award shall grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties."

120. In this case, the UCI appeal is dismissed and the decision being appealed must be confirmed. This arbitration being at no cost to the parties, since it is a disciplinary case of an international nature, it is necessary to determine whether and to what extent Mr. Landaluce and the RFEC have a right to an indemnity for their attorneys' costs and for the other costs relative to the present arbitration proceedings. After having duly considered the overall circumstances of the case, particularly the large number of futile arguments invoked by the defendants, the Panel considers it equitable to let each party pay the costs incurred in this procedure.

VII. CONFIDENTIALITY

121. According to article R59 paragraph 6 of the Code of Sports-related Arbitration:

"The award, a summary and/or a press release setting forth the results of the proceedings shall be made public by the CAS, unless both parties agree that they should remain confidential."

122. Mr. Landaluce indicated that he wished for the proceedings to remain confidential and that no press release setting forth the proceedings be made public by the CAS.

123. The UCI indicated that the proceedings initiated against Mr. Landaluce were already known to the public, since they have been the subject of a press release by the CAS.

124. During the Hearing, the UCI, Mr. Landaluce and the RFEC did not reach agreement on the confidential or non-confidential character of the present proceedings. Under these circumstances, the CAS will be able, if it deems it appropriate, to make public a summary and/or a press release setting forth the results of the proceedings.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport is competent to rule on the appeal submitted by the Union Cycliste Internationale.

2. The appeal submitted on 26 June 2006 by the Union Cycliste Internationale against the decision rendered on 5 May 2006 by the Comité Nacional de Competición y Disciplina Deportiva de la Real Federación Española de Ciclismo is dismissed.

3. The award is rendered at no cost, except for the Court Office Fee of 500 Swiss francs paid at the beginning of the proceedings by the Union Cycliste Internationale, which shall be kept by the CAS.

4. Each party shall bear the costs of its attorneys and other costs associated with the present proceedings.

Lausanne, 19 December 2006.

COURT OF ARBITRATION FOR SPORT

President of the Panel

Jan Paulsson

Olivier Carrard
Arbitrator

José Juan Pintó
Arbitrator

Shaparak Saleh
Ad-hoc clerk

TAS 2006/A/1119 Union Cycliste Internationale (UCI) c/ Iñigo Landaluce Intxaurraga & Real Federación Española de Ciclismo (RFEC)

SENTENCE ARBITRALE

rendue par le

TRIBUNAL ARBITRAL DU SPORT

siégeant dans la composition suivante :

Président :	Maître Jan **Paulsson**, avocat à Paris, France
Arbitres :	Maître Olivier **Carrard**, avocat à Genève, Suisse Maître José Juan **Pintó**, avocat à Barcelone, Espagne
Greffier ad hoc :	Maître Shaparak Saleh, avocat à Paris, France

dans l'arbitrage entre

L'Union Cycliste Internationale (UCI), Aigle, Suisse
représentée par Maître Philippe Verbiest, avocat à Leuven, Belgique

contre

Monsieur Iñigo Landaluce Intxaurraga, Espagne
représenté par Maître Carmen Coello de Portugal Silva et Maître Immaculada Herranz Perlado, avocats à Madrid, Espagne

et

Real Federación Española de Ciclismo (RFEC), Madrid, Espagne
représentée par Maître José Antonio del Valle Herán, avocat à Madrid, Espagne

* * * * * * * * * * *

I. LES FAITS

1. L'Union Cycliste Internationale (l'***UCI***) est l'association des fédérations nationales du cyclisme. Elle a pour but la direction, le développement, la réglementation, le contrôle et la discipline du cyclisme. Le système de contrôle antidopage mis en place par l'UCI comprend notamment le Règlement du Contrôle Antidopage (le ***RCAD***), la liste des classes de substances dopantes et des méthodes de dopage, la liste des épreuves internationales à contrôler ainsi que la liste des laboratoires accrédités.

2. La Real Federación Española de Ciclismo (la ***RFEC***), fédération nationale espagnole chargée du cyclisme et dotée d'un règlement disciplinaire au niveau national, est membre de l'UCI.

3. Monsieur Iñigo Landaluce Intxaurraga (***Monsieur Landaluce***) est un coureur cycliste espagnol de la catégorie élite, titulaire d'une licence délivrée par la RFEC. Membre à l'époque des faits de l'équipe cycliste Euskaltel, il a participé à la course cycliste internationale sur route « Critérium du Dauphiné Libéré » qui s'est déroulée du 5 au 12 juin 2005.

4. A l'issue de l'étape du 11 juin 2005, Monsieur Landaluce a fait l'objet d'un contrôle antidopage. Au cours du prélèvement de l'échantillon, Monsieur Landaluce a indiqué avoir pris de la triamcinolone en infiltration le 21 mars 2005.

5. L'échantillon A prélevé sur Monsieur Landaluce a été analysé par le laboratoire français de dépistage du dopage de Châtenay-Malabry (le ***LNDD***), laboratoire accrédité par l'Agence Mondiale Antidopage (l'***AMA***). Son rapport d'analyse du 17 juillet 2005 a révélé que *« l'analyse par spectrométrie de masse de rapports isotopiques indique une prise de Testostérone ou de l'un de ses précurseurs »*. Le 28 juillet 2005, le rapport d'analyse relatif à l'échantillon A a été transmis à la RFEC, afin que soit mise en œuvre une procédure disciplinaire, conformément à l'article 187 du RCAD.

6. Le 11 août 2005, Monsieur Landaluce a, par l'intermédiaire de la RFEC, sollicité une contre-analyse. Il a ensuite demandé que la contre-analyse qui était initialement prévue les 14 et 21 septembre 2005, soit reportée au 19 octobre 2005. Le 21 octobre 2005, la contre-analyse a confirmé la présence de testostérone de nature exogène dans l'échantillon B.

7. Par télécopie du 27 octobre 2005, l'UCI a transmis les résultats d'analyse de l'échantillon B à la RFEC et lui a demandé de poursuivre la procédure disciplinaire.

8. Le 5 mai 2006, la RFEC, par l'intermédiaire du Comité Nacional de Competición y Disciplina Deportiva (Comité national de compétition et discipline sportive / ***CNCDD***), a jugé que les conditions dans lesquelles l'analyse avait été effectuée révélaient l'existence « *d'un processus incomplet pour ne pas être conforme à toutes les exigences légales applicables et, ainsi, ne pouvant pas garantir totalement le résultat* ». Le CNCDD a dès lors estimé que « *la maxime juridique* « in dubio pro reo » [était] *pleinement applicable au cas présent* », a classé l'affaire et acquitté Monsieur Landaluce.

9. Monsieur Landaluce n'a participé à aucune course cycliste entre le 24 juillet 2005 et le 15 mai 2006.

II. LA PROCÉDURE DEVANT LE TRIBUNAL ARBITRAL DU SPORT

A. LES DEMANDES ET REPONSES DES PARTIES

10. Par déclaration du 26 juin 2006, l'UCI a saisi le Tribunal Arbitral du Sport (le ***TAS***).

Le 17 juillet 2006, l'UCI a déposé son mémoire d'appel demandant au TAS :

« *1) de réformer la décision du Comité national de compétition et discipline sportive de la RFEC ;*

2) de condamner M. Landaluce Intxaurraga à une suspension de 2 ans, conformément au RAD ;

3) de prononcer la disqualification de M. Landaluce Intxaurraga des courses cyclistes auxquelles il a participé à partir du 11 juin 2005 et notamment de la course cycliste du « Critérium du Dauphiné Libéré 2005 », jusqu'au 29 juillet 2005 au moins ;

4) de condamner M. Landaluce Intxaurraga et la Real Federacion Española de Ciclismo à payer à l'UCI un montant de CHF 1'000.- à titre de frais de gestion des résultats (art. 245.2 RAD) ;

5) de condamner M. Landaluce Intxaurraga et la Real Federacion Española de Ciclismo, solidairement à rembourser à l'UCI l'émolument de CHF 500.- et à tous les autres frais, y compris une contribution aux frais de l'UCI ».

11. Monsieur Landaluce a déposé sa réponse le 8 septembre 2006, aux termes de laquelle il demande au TAS de :

 - se déclarer incompétent ;
 - condamner l'UCI au paiement des frais générés par la procédure.

 A titre subsidiaire, Monsieur Landaluce sollicite du TAS qu'il :

 - rejette l'appel interjeté par l'UCI ;
 - ne prononce aucune sanction à son encontre ;
 - condamne l'UCI au paiement des frais.

 A titre encore plus subsidiaire, Monsieur Landaluce fait valoir que toute sanction prononcée à son encontre devra être réduite de 9 mois et demi, période pendant laquelle il s'est abstenu de courir.

12. La RFEC a déposé sa réponse le 14 septembre 2006, faisant valoir en substance que :

 - la décision de la CNCDD doit être confirmée ;
 - l'UCI doit être déboutée de son appel ;
 - l'UCI doit être condamnée aux dépens, en application de l'article 282 du RCAD.

B. L'AUDIENCE

13. L'audience a eu lieu le 11 octobre 2006, au siège du TAS à Lausanne (l'***Audience***), en présence des trois membres du Tribunal Arbitral (la ***Formation***) et des avocats des parties.

14. La Formation a entendu les témoins et experts suivants :

 - Pour l'UCI :
 - Docteur Martial Saugy, directeur du laboratoire suisse d'analyse du dopage, (***Dr Saugy***) ;
 - Professeur Jacques de Ceaurriz, directeur du LNDD (***Prof. de Ceaurriz***).
 - Pour Monsieur Landaluce :

- Docteur Douwe de Boer, chercheur au Laboratoire de chimie clinique à l'Hôpital Universitaire de Maastricht et ancien directeur du Département dopage du Laboratoire d'analyses et de dopage de Lisbonne (***Dr de Boer***);
- Docteur Detlef Thieme, spécialiste en toxicologie médico-légale au sein du département de toxicologie médico-légale de l'Institut de médecine légale de Munich (***Dr Thieme***);
- Monsieur Igniacio Colomer Hernández, Professeur de droit à l'Université Carlos III de Madrid (***Prof. Colomer***), entendu par vidéoconférence.

C. S'AGISSANT DE LA PRODUCTION DES PIECES 43 ET 43 BIS PAR MONSIEUR LANDALUCE ET DE L'AUDITION DE MONSIEUR MIGUEL MADARIAGA

15. Le 22 septembre 2006, soit 14 jours après avoir déposé sa réponse, Monsieur Landaluce a déposé les pièces complémentaires 43 et 43 bis.

16. L'UCI s'étant opposée à la production desdites pièces le 25 septembre 2006, Monsieur Landaluce a indiqué, par télécopie du 2 octobre 2006, qu'il souhaitait faire entendre comme témoin Monsieur Miguel Madariaga (***Monsieur Madariaga***).

17. Par télécopie du 4 octobre 2006, l'UCI s'est opposée à l'audition de Monsieur Madariaga, la réponse de Monsieur Landaluce ne mentionnant aucunement l'audition de ce témoin.

18. Aux termes de l'article R56 du Code de l'arbitrage en matière de sport :

> « *Sauf accord contraire des parties ou décision contraire du Président de la formation commandée par des circonstances exceptionnelles, les parties ne sont pas admises à compléter leur argumentation, ni à produire de nouvelles pièces, ni à formuler de nouvelles offres de preuves après la soumission de la motivation d'appel et de la réponse* ».

19. Lors de l'Audience, l'UCI a indiqué qu'elle ne donnerait son accord à l'audition de Monsieur Madariaga que si elle pouvait verser aux débats une nouvelle pièce reçue la veille. Le Président de la Formation a demandé que la pièce soit transmise à la RFEC et à Monsieur Landaluce afin que ceux-ci en prennent connaissance. Au vu de la pièce, Monsieur Landaluce a renoncé à faire entendre Monsieur Madariaga.

20. En l'absence de « *circonstances exceptionnelles* » au sens de l'article R56 du Code de l'arbitrage en matière de sport, le Président de la Formation a décidé de ne pas admettre

les nouvelles pièces et de ne pas procéder à l'audition du témoin.

III. S'AGISSANT DE LA COMPÉTENCE DU TAS

21. L'organisation de compétitions professionnelles internationales suppose une répartition claire des compétences entre les autorités nationales et internationales, d'une part, entre le secteur public et le secteur privé, d'autre part.

22. Il est des domaines, tel que le trafic de stupéfiants, pour lesquels chaque État exige, au nom de la souveraineté nationale, de contrôler lui-même tout comportement répréhensible sur son territoire, et refuse de laisser à des associations privées le soin de s'en charger, fût-ce par le biais d'une délégation de service public.

23. En revanche, la discipline en matière sportive, qui se traduit par la disqualification de l'athlète ou par l'interdiction qui lui est faite de participer à de futures compétitions, répond essentiellement à la volonté d'éliminer toute concurrence déloyale. C'est pourquoi elle est légitimement confiée à des autorités sportives.

24. Cela est d'autant plus vrai s'agissant de l'exercice d'un sport au niveau international, qui ne saurait obéir à une multiplicité de règles nationales potentiellement contradictoires.

25. Confier aux seules lois nationales le soin de régir les conditions dans lesquelles doivent se dérouler les compétitions internationales aboutirait à un système incohérent et inégalitaire, avec de surcroît le risque que les autorités nationales se livrent tôt ou tard à une course à la législation la moins répressive.

26. Pour pallier de tels inconvénients il suffit de s'assurer que la même discipline sportive, lorsqu'elle se déroule dans un cadre international, est soumise aux mêmes règles pour tous les concurrents.

27. Or, Monsieur Landaluce tente de faire accroire que la situation juridique en Espagne dicterait une solution différente. Il fait en effet valoir que le TAS ne serait pas compétent pour connaître de l'appel de l'UCI contre une décision du CNCDD et indique que le Comité Espagnol de Discipline Sportive du Conseil Supérieur des Sports Espagnols (le ***CEDS***) serait seul compétent.

28. Au soutien de sa prétention, Monsieur Landaluce invoque un certain nombre de textes qui sont repris ci-après :

- L'article 6 des Statuts de l'UCI :

 « *1. Les fédérations s'engagent, du fait de leur affiliation, à se conformer aux statuts et règlements de l'UCI ainsi qu'à toute décision prise conformément à ceux-ci. De même, elles s'engagent à faire respecter les statuts, règlements et décisions de l'UCI par toute personne concernée.*

 2. Les règlements de l'UCI doivent être repris dans les règlements correspondants des fédérations.

 3. Les statuts et règlements des fédérations ne peuvent aller à l'encontre de ceux de l'UCI. En cas de divergence, seuls les statuts et les règlements de l'UCI seront appliqués. Les statuts et les règlements des fédérations doivent contenir la clause expresse qu'en cas de conflit avec les statuts ou règlements de l'UCI, seuls ces derniers seront appliqués.

 4. Les alinéas ci-dessus sont appliqués dans le respect des dispositions de droit impératif en vigueur dans le pays de la fédération concernée ».

- L'article 35 du Décret Royal 1835/1991 du 20 décembre 1991 relatif aux fédérations sportives espagnoles :

 « *Les questions suivantes ne pourront pas faire l'objet d'une conciliation ou d'un arbitrage :* [...]

 b) Celles qui seront en relation avec le contrôle des substances et des méthodes prohibées dans le sport et la sécurité de la pratique sportive [...] ».

- L'article 90.2 des Statuts de la RFEC dans sa rédaction issue de la décision du 11 octobre 2004 :

 « *Les questions suivantes ne pourront pas faire l'objet d'une conciliation :* [...]

 b) Celles qui seront en relation avec le contrôle des substances et des méthodes prohibées dans le sport et la sécurité de la pratique sportive [...] ».

- L'article 24 de la Constitution espagnole du 28 décembre 1978 :

 « *1. Toute personne a le droit d'obtenir la protection effective des juges et des tribunaux pour exercer ses droits et ses intérêts légitimes sans, qu'en aucun cas, cette protection puisse lui être refusée.*

 2. De même, toute personne a le droit d'aller devant le juge ordinaire déterminé préalablement par la loi, de se défendre et de se faire assister par un avocat, d'être informée de l'accusation portée contre elle, d'avoir un procès public sans délai indu et avec toutes les garanties, d'utiliser les preuves nécessaires à sa défense, de ne pas faire de déclaration contre elle-même, de ne pas s'avouer coupable et d'être présumée innocente ».

- L'article 91.1 des Statuts de la RFEC dans sa rédaction issue de la décision du 11 octobre 2004 :

 « *La déclaration de volonté irréfutable des parties au litige de se soumettre à la procédure de conciliation sera exigée. Pour cela, une convention*

d'arbitrage sera souscrite par écrit et devra exprimer la renonciation à la voie judiciaire, l'obligation de se soumettre à la décision d'un ou de plusieurs arbitres et aux règles de procédure ».

- L'article 84.1 de la Loi 10/1990 du 15 octobre 1990 relative au Sport :

 « *Le Comité Espagnol de Discipline Sportive est l'organe national affecté organiquement au Conseil Supérieur des Sports qui, agissant indépendamment de celui-ci, tranche en dernier recours, par voie administrative, les litiges portant sur les questions disciplinaires sportives qui relèvent de son ressort* ».

- L'article 10 des Statuts de la RFEC :

 « *1. Sous la coordination et la tutelle du Conseil Supérieur des Sports, la RFEC exercera les fonctions publiques de nature administrative suivantes :* [...]

 f) Exercer l'autorité disciplinaire sportive, selon les termes établis par la Loi sur le Sport, ses dispositions particulières de développement et ses statuts et règlements ».

- L'article 59 du Décret Royal 1591/1992 du 23 décembre 1993 :

 « *Les compétences du Comité Espagnol de Discipline Sportive s'étendent :*

 a. A la connaissance et décision, par voie de recours, des prétentions formulées en ce qui concerne les actes des organes sportifs titulaires de l'autorité disciplinaire qui épuisent la voie sportive, selon la répartition des compétences établie par la Loi sur le Sport et par le présent décret royal ».

29. Monsieur Landaluce prétend en substance :

- que le recours à l'arbitrage serait interdit en matière de dopage en Espagne ;

- que la Constitution espagnole érigerait un droit inaliénable d'accès à la justice et aux tribunaux. Monsieur Landaluce indique qu'il ne saurait être privé de ce droit constitutionnel d'accès à la justice en n'étant autorisé à porter son appel que devant le TAS ;

- ne jamais avoir manifesté sa volonté de se soumettre à l'arbitrage du TAS et n'avoir signé aucune convention d'arbitrage. Monsieur Landaluce estime que le simple fait de disposer d'une licence de la RFEC ne saurait valoir acceptation de la compétence du TAS ;

- que la RFEC serait une autorité publique exerçant des fonctions publiques disciplinaires sous la tutelle d'un organisme public espagnol. Monsieur Landaluce estime, en conséquence, que les décisions de la RFEC devraient

faire l'objet d'un recours administratif devant le CEDS puis, le cas échéant, devant le juge administratif espagnol ;

- qu'en vertu de l'article 6 alinéa 4 des Statuts de l'UCI, la RFEC doit respecter la législation espagnole lorsqu'elle applique les normes de l'UCI ;
- que les articles 242 et 280 à 285 du RCAD, qui établissent la compétence exclusive du TAS pour connaître de l'appel dirigé contre les décisions des fédérations nationales seraient inapplicables conformément à l'article 6.4 des Statuts de l'UCI, dès lors que cette compétence exclusive violerait le droit espagnol ;
- que l'arrêt du Tribunal central de contentieux administratif n° 7 de Madrid du 8 juin 2006 rendu dans une affaire Santiago Perez Fernandez reconnaîtrait la possibilité de former un recours hiérarchique contre les décisions du CNCDD devant le CEDS puis, le cas échéant, devant le juge administratif espagnol.

30. L'UCI estime, pour sa part, que le TAS est compétent et que le RCAD est applicable, en se fondant sur les textes suivants :

- L'article 1.1.001 du Règlement du sport cycliste de l'UCI :
 « *La licence est une pièce d'identité qui confirme l'engagement de son titulaire à respecter les statuts et règlements et qui l'autorise à participer aux événements cyclistes* ».

- L'article 1.1.004 du Règlement du sport cycliste de l'UCI :
 « *Toute personne demandant une licence s'engage de ce fait à respecter les statuts et les règlements de l'UCI, des confédérations continentales de l'UCI et des fédérations membres de l'UCI et à participer aux manifestations cyclistes d'une manière sportive et loyale. Elle s'engage notamment à respecter les obligations visées à l'article 1.1.023.*
 Dès la demande de licence et pour autant que la licence est délivrée, le demandeur est responsable des infractions aux règlements qu'il commet et soumis à la juridiction des instances disciplinaires.
 Tout licencié reste soumis à la juridiction des instances disciplinaires compétentes pour les faits commis alors qu'il était demandeur ou titulaire d'une licence, même si la procédure est engagée ou se poursuit après le moment où l'intéressé n'a plus de licence ».

- L'article 1.1.023 du Règlement du sport cycliste de l'UCI :
 « [...] *2. Je m'engage à respecter les statuts et règlements de l'Union Cycliste Internationale, de ses confédérations continentales et de ses fédérations nationales.*

Je déclare avoir lu ou avoir eu la possibilité de prendre connaissance de ces statuts et règlements.

Je participerai aux compétitions ou manifestations cyclistes d'une manière sportive et loyale.

Je me soumettrai aux sanctions prononcées à mon égard et porterai les appels et litiges devant les instances prévues aux règlements. J'accepte le Tribunal Arbitral du Sport (TAS) comme seule instance d'appel compétente dans les cas et suivant les modalités prévues par les règlements.

J'accepte que le TAS se prononce en dernière instance et que ses décisions seront définitives et sans appel. Sous ces réserves, je soumettrai tout litige éventuel avec l'UCI exclusivement aux tribunaux du siège de l'UCI.

3. J'accepte de me soumettre à et être lié par le règlement antidopage de l'UCI, les clauses du Code Mondial Antidopage et ses Standards internationaux auxquels le règlement antidopage de l'UCI fait référence ainsi que les règlements antidopage des autres instances compétentes suivant les règlements de l'UCI et le Code Mondial Antidopage, pour autant qu'ils soient conformes à ce Code. [...] ».

- L'article 5 des dispositions préliminaires du Règlement du sport cycliste de l'UCI :

 « *La participation à une épreuve cycliste, à quelque titre que ce soit, vaut acceptation de toutes les dispositions qui y trouvent application* ».

31. L'UCI indique, en substance, qu'il ressort de la lecture combinée des articles précités que :

 - les licenciés des fédérations membres de l'UCI sont soumis au RCAD ;
 - toute personne qui demande une licence s'engage à respecter le RCAD et s'engage notamment à se soumettre aux contrôles antidopage et à la compétence du TAS en dernier ressort.

32. Au soutien de sa prétention, l'UCI rappelle que la décision du CNCDD du 5 mai 2006 dont il est fait appel a été rendue en application du RCAD.

33. En outre, lors de l'Audience, l'UCI a fait valoir que :

 - le TAS devrait apprécier la compétence et l'arbitrabilité des litiges selon la loi fédérale suisse sur le droit international privé (***LDIP***) aux termes de laquelle (i) le dopage est arbitrable, et (ii) les clauses d'arbitrage par référence sont valables (article 178 de la LDIP) ;
 - selon la jurisprudence du TAS, l'existence d'une loi nationale n'empêcherait pas l'application de la réglementation de la fédération internationale (TAS 2005/A/872, sentence du 30 janvier 2006, UCI / Federico Muñoz Fernandez et Federación Colombiana De Ciclismo) ;

- la législation espagnole invoquée par Monsieur Landaluce n'aurait vocation à s'appliquer qu'en Espagne, comme le révèleraient :

 (i) l'article 1.3° du Décret Royal 1835/1991 du 20 décembre 1991 sur les fédérations sportives espagnoles, aux termes duquel le champ de compétence des fédérations sportives espagnoles se limiterait au territoire national ;

 (ii) le préambule de la Loi 10/1990 du 15 octobre 1990 sur le sport, selon lequel l'objectif de la loi serait de définir le cadre juridique applicable à la pratique sportive au sein du territoire espagnol.

- l'article 7 du Décret Royal 255/1996 du 16 février 1996, aux termes duquel les sanctions imposées en application des règles antidopage d'une quelconque fédération, que celle-ci soit nationale, internationale ou autonome, produisent leurs effets sur l'ensemble du territoire espagnol, révèlerait nécessairement que des sanctions peuvent être imposées par d'autres fédérations que la RFEC et produire leurs effets en Espagne ;

- n'admettre comme seule voie de recours contre les décisions du CNCDD l'appel devant le CESD équivaudrait à priver l'UCI de tout droit de regard sur les décisions émanant de la fédération nationale, dans la mesure où l'UCI ne serait pas habilitée à former appel devant la juridiction espagnole.

34. Dans ses écritures et lors de l'Audience, la RFEC a indiqué se rallier à l'interprétation faite par l'UCI, s'agissant de la compétence du TAS. La RFEC a par ailleurs indiqué qu'elle était un établissement privé « *à deux casquettes* » exerçant, selon les cas, des missions d'ordre public ou d'ordre privé. La RFEC a précisé que, dans le cadre de compétitions internationales, comme au cas particulier, elle exerçait une mission d'ordre privé.

35. Lors de l'Audience, le Prof. Colomer a fait les observations suivantes :

- l'octroi d'une licence par la RFEC serait constitutif d'un acte administratif ;
- le pouvoir de sanction de la RFEC interviendrait dans le cadre de l'exercice d'une fonction publique ;

- le TAS ne serait pas compétent car la sanction imposée par le CNCDD serait un acte administratif ;
- l'interdiction du recours à l'arbitrage en matière de dopage serait impérative pour les parties, qui ne sauraient y déroger ;
- la Constitution espagnole prévaudrait sur tout traité international ;
- tout décret contraire à la Constitution espagnole serait anticonstitutionnel ;
- l'article 7 du Décret Royal 255/1996 du 16 février 1996 serait anti-constitutionnel.

36. Consciente du fait que le présent litige illustre la tension qui peut exister entre la loi nationale d'un athlète et le règlement de la fédération internationale auquel celui-ci est soumis, la Formation rappelle que l'UCI est l'association des fédérations nationales du cyclisme qui a pour but la direction, le développement, la réglementation, le contrôle et la discipline du cyclisme international, notamment en matière de dopage. Monsieur Landaluce est, quant à lui, un cycliste professionnel de la catégorie élite, titulaire d'une licence aux termes de laquelle il a accepté de se soumettre aux règles de l'UCI.

37. Certes, la demande de licence de Monsieur Landaluce révèle que le modèle de demande de licence utilisé par la RFEC n'est pas conforme au règlement de l'UCI. Toutefois, les articles 2 et 3 de la demande de licence signée par Monsieur Landaluce indiquent que son détenteur s'engage à respecter la législation espagnole en vigueur, les Statuts de l'UCI ainsi que de ses confédérations, et qu'il accepte de se soumettre aux contrôles antidopage dans les conditions prévues à l'article 1.1.023 du Règlement du sport cycliste de l'UCI ainsi qu'à la compétence du TAS qui y est explicitement prévue. La RFEC n'a d'ailleurs pas manqué d'indiquer, lors de l'Audience, que le fait de lui demander une licence valait acceptation de la compétence du TAS, même en l'absence d'une clause expresse à cet effet. La Formation considère qu'en demandant sa licence à la RFEC, Monsieur Landaluce s'est soumis à la compétence du TAS, ainsi qu'aux règlements de l'UCI.

38. D'aucuns pourraient penser qu'il aurait été préférable que la demande de licence mentionne expressément la soumission des parties à l'arbitrage du TAS. A cet égard, la Formation souligne que les coureurs d'élite ne sont pas des profanes, contrairement aux consommateurs, mais des sportifs avertis qui ont sans le moindre doute connaissance de

l'existence du TAS et de sa compétence pour connaître des affaires de dopage. Dès lors, la compétence du TAS telle que prévue à l'article 1.1.023 du Règlement du sport cycliste ne saurait en aucun cas constituer une surprise pour la personne qui formule une demande de licence. Exiger qu'en sus des éléments rappelés au paragraphe 37 ci-dessus, la demande de licence mentionne expressément la compétence du TAS pour que celui-ci soit compétent, serait un excès de formalisme et une exigence non requise par la jurisprudence du Tribunal fédéral suisse.

39. L'argumentation de Monsieur Landaluce tendant à faire valoir que l'article 6 alinéa 4 des Statuts de l'UCI enjoindrait à la RFEC d'appliquer la loi espagnole et d'interdire le recours à l'arbitrage du TAS n'emporte guère la conviction de la Formation. En effet, l'article 6 des Statuts de l'UCI s'adresse aux seules fédérations nationales. Les trois premiers alinéas de cet article mettent à la charge de ces fédérations une obligation d'harmoniser leurs règles en reprenant les règlements de l'UCI. Le quatrième alinéa de l'article 6 des Statuts de l'UCI, indique simplement que cette harmonisation doit tenir compte d'éventuelles dispositions impératives applicables dans le pays de la fédération concernée. En conséquence, l'article 6 alinéa 4 des Statuts de l'UCI renvoie expressément aux trois paragraphes qui le précèdent et ne saurait être détaché de son contexte. L'article 6 des Statuts de l'UCI ne s'adresse donc qu'aux fédérations nationales, en vue de leur indiquer la démarche à suivre afin d'harmoniser leur droit, et ne saurait nullement être invoqué par un cycliste afin de se soustraire à l'application des règlements de l'UCI et, ce faisant, à la compétence du TAS.

40. Au demeurant, aucune disposition de la loi espagnole n'exclut le recours à l'arbitrage. Ce n'est certainement pas le cas de l'article 24 de la Constitution espagnole. Il suffit pour s'en convaincre de comparer la portée de ce texte à celle de l'article 6 alinéa 1 de la Convention européenne des droits de l'homme (la ***CEDH***) qui prévoit que « *toute personne a droit à ce que sa cause soit entendue* [...] *par un tribunal indépendant et impartial, établi par la loi* ». Or, la Commission européenne des droits de l'homme a jugé dans une affaire X. / RFA du 5 mars 1962, que l'insertion d'une clause compromissoire dans un contrat valait renonciation au bénéfice de la CEDH et qu'aucune stipulation de la CEDH n'interdisait une telle renonciation. Sauf preuve du contraire, l'article 24 de la Constitution espagnole, tout comme l'article 6 alinéa 1 de la CEDH, n'interdit nullement le recours à l'arbitrage. En effet, la compétence du TAS ne

prive pas Monsieur Landaluce de son droit d'accès à la justice tel que prévu par la Constitution espagnole, dès lors qu'en matière internationale, le recours à l'arbitrage est une modalité d'exercice de ce droit.

41. La Formation considère en définitive, que les dispositions espagnoles invoquées par Monsieur Landaluce n'ont vocation à s'appliquer que dans le cadre de compétitions cyclistes nationales, et ne sauraient faire obstacle ni à l'application des règlements de l'UCI, ni à la compétence du TAS. En juger autrement conduirait à une véritable course à la législation nationale la plus clémente.

42. Il est en effet impératif que les fédérations sportives internationales, telles que l'UCI, aient un droit de regard sur les décisions des fédérations nationales en matière de dopage. Ce droit de regard de l'UCI, qui se matérialise par la possibilité de former un appel à l'encontre des décisions des fédérations nationales devant le TAS, a pour objet de pallier le risque que la compétition internationale ne soit faussée par une fédération nationale qui se garderait de sanctionner ses membres.

43. Par conséquent, l'argument de Monsieur Landaluce tendant à faire valoir que la seule voie de recours contre les décisions du CNCDD serait un appel devant le CESD ne saurait emporter l'adhésion de la Formation.

44. De même, la contestation par Monsieur Landaluce de la compétence du TAS au motif que la réglementation antidopage serait confiée à une autorité publique porte à faux. Il ressort en effet de la jurisprudence du TAS que le pouvoir des fédérations internationales, telles que l'UCI, s'exerce quand bien même le contrôle et la sanction du dopage seraient confiés, comme au cas particulier, à une autorité publique.

45. Le pouvoir des fédérations internationales a pour objet d'éliminer toute concurrence déloyale et toute course à la législation la plus clémente. Elle tend à soumettre tous les athlètes à un traitement égalitaire, en veillant à ce que certaines fédérations nationales ne fassent pas preuve de passivité face aux manquements commis par leurs sportifs nationaux. C'est ainsi que dans une affaire de dopage de nageurs en 1997, le TAS a reconnu comme nécessité impérieuse que les fédérations internationales aient la possibilité de revoir les décisions des fédérations nationales dans les cas de dopage. Il s'agit de prévenir le risque que les compétitions internationales ne soient faussées, en raison des sanctions trop clémentes que pourrait être tentée de prononcer une fédération nationale (TAS 96/156, sentence du 10 octobre 1997, F. / FINA).

46. Par la suite, une autre formation du TAS a eu l'occasion d'étendre cette jurisprudence aux sanctions prononcées par les autorités publiques nationales, dans une sentence B. / Fédération Internationale du Judo du 17 mars 1999 (TAS 98/214, sentence du 17 mars 1999, B. / Fédération Internationale de Judo). Il s'agissait, en l'espèce, d'un contrôle de dopage positif sanctionné par une suspension prononcée par un arrêté du Ministre des Sports français. En effet, une loi française de 1989 donnait audit Ministre le pouvoir de substituer sa décision à toute mesure d'interdiction prise par des fédérations sportives nationales. Au cas particulier, la Fédération française avait prononcé une sanction de deux ans de suspension, dont une avec sursis, à laquelle l'arrêté ministériel avait substitué une simple suspension d'un an. Or, cette dernière sanction n'était pas conforme aux règlements de la Fédération Internationale de Judo (***FIJ***) qui a donc porté l'affaire devant le TAS. Ce dernier a prononcé une suspension de 15 mois.

47. A l'occasion de cette sentence, les arbitres avaient évoqué le problème qui est au cœur du présent litige :

> « *La formation est d'avis que la latitude accordée par cette jurisprudence aux fédérations internationales doit être étendue aux cas où la procédure de contrôle et la sanction de dopage ne sont pas diligentées par une fédération nationale, conformément à une réglementation sportive, mais par une autorité publique, en application d'une loi nationale, comme en l'espèce, ou, le cas échéant, sur la base d'une convention internationale.*
>
> *Le pouvoir d'extension au niveau international des décisions nationales relatives au dopage, quelle que soit l'autorité qui les prononce, se justifie non seulement par le souci de prévenir le risque de voir certaines fédérations ou des organismes gouvernementaux se livrer à une concurrence déloyale des plus malsaines, en omettant de sanctionner leurs sportifs de manière aussi rigoureuse et sévère que d'autres fédérations et / ou que leur fédération internationale, mais aussi par l'objectif que chaque fédération internationale doit chercher à atteindre, à savoir faire respecter un traitement égal et cohérent à tous les pratiquants du même sport* ».

48. En conséquence, les dispositions du droit espagnol auxquelles il est fait référence ne permettent pas de conclure à l'incompétence du TAS. C'est ce que le TAS a constaté à différentes reprises, notamment dans le domaine du cyclisme dans l'affaire Muñoz (TAS 2005/A/872, sentence du 30 janvier 2006, UCI / Federico Muñoz Fernandez et Federación Colombiana De Ciclismo), à l'occasion de laquelle la conclusion suivante a été formulée :

> *"The panel is prepared to accept that as a matter of Colombian Law it was possible for Mr Muñoz to appeal to the General Disciplinary Committee of the Colombian National Olympic Committee. However, to do so was a breach of his contract with the*

UCI. At best, the decision of the General Disciplinary Committee could only have an effect within Colombia. It would not entitle Mr Muñoz to participate in cycle races organized under the auspices of the UCI, or to avoid the UCI's disciplinary code".

49. L'autorité des États et l'autorité sportive internationale ne sont pas en concurrence ; au contraire, leurs rôles sont complémentaires. L'autorité étatique se borne à contrôler la conduite de ses justiciables, tandis que la fédération internationale gère les compétitions qui relèvent de son ressort. Un même comportement peut être sanctionné pénalement dans un lieu donné, sans pour autant entraîner une sanction du cycliste au niveau international. De même, un comportement peut ne pas être sanctionné pénalement tout en étant néanmoins susceptible de générer une exclusion des concours sportifs car il porte atteinte à la loyauté de la compétition.

50. Cette complémentarité entre autorité sportive étatique et internationale peut revêtir une forme particulière lorsqu'une autorité publique se substitue à la fédération nationale pour décider des sanctions – comme ce fut le cas dans l'affaire de la FIJ précitée, ou comme au cas présent. La souveraineté nationale, telle qu'elle s'exprime à l'occasion d'une mesure disciplinaire sportive rendue par une autorité nationale, n'a, en principe, vocation à s'appliquer que sur le seul territoire national. La décision nationale peut toutefois être remplacée par une décision de l'autorité internationale – le TAS – pour que soit assurée la nécessaire uniformité du droit. Certes, il est théoriquement concevable que l'État impose ses décisions nationales jusque dans les compétitions internationales se déroulant sur son territoire au mépris de l'autorité internationale. Un tel comportement irait cependant à l'encontre de tous les efforts tendant à lutter contre le dopage au niveau international, et pourrait conduire à l'exclusion de l'État concerné de l'organisation des compétitions internationales. Il serait surprenant qu'un État souhaite se placer dans une telle situation, et rien dans les textes invoqués dans la présente affaire ne laisse à penser que telle serait la position adoptée par l'Espagne. Bien au contraire, le préambule du Décret Royal 255/1996 du 16 février 1996 reflète clairement que l'Espagne se soucie de la conformité de ses normes avec les normes internationales :

« *En application de l'article 76.1.d) de la Loi sur le Sport et en accord avec les critères posés par les normes sportives internationales, le présent Décret Royal identifie les comportements constitutifs d'infractions aux règles du dopage et établit les sanctions y relatives* [...] ».

51. Loin de venir au soutien de la prétention de Monsieur Landaluce, le Décret Royal 255/1996 du 16 février 1996 qu'il invoque, ne fait que confirmer le raisonnement qui a été développé ci-avant. En effet, l'article 7 de ce Décret reconnaît explicitement que les

sanctions prononcées par une fédération internationale produisent leurs effets sur l'ensemble du territoire espagnol. Le contraire aurait été pour le moins surprenant.

52. Aux vues de ce qui précède, la Formation conclut qu'elle est compétente pour connaître du présent litige, conformément aux articles 280 à 291 du RCAD.

53. Cela n'est d'ailleurs pas contesté par la RFEC qui a, tout au long de la procédure, reconnu la compétence du TAS et l'applicabilité du RCAD, auquel il était expressément fait référence dans la décision du CNCDD du 5 mai 2006, objet du présent recours.

IV. S'AGISSANT DE LA RECEVABILITÉ DE L'APPEL

54. L'article 285 du RCAD dispose que la déclaration d'appel de l'UCI doit être soumise au TAS dans un délai d'un mois à compter de la réception du dossier complet de l'instance d'audition de la fédération nationale. Toutefois, lorsque l'UCI n'a pas demandé le dossier dans les 15 jours suivant la réception de la décision, comme le prévoit l'article 247 du RCAD, le délai d'appel est d'un mois à compter de la réception de la décision complète.

55. Au cas particulier, l'UCI a reçu la décision du CNCDD le 9 mai 2006 et a demandé le dossier complet le 11 mai 2006. Le dossier complet a été reçu par l'UCI le 26 mai 2006. La déclaration d'appel ayant été envoyée le 26 juin 2006, l'appel a été formé dans les délais.

V. S'AGISSANT DU FOND

A. PRINCIPES GÉNÉRAUX

56. Aux termes de l'article 16 du RCAD :

> « *La charge de la preuve incombera à l'UCI et à ses fédérations nationales qui devront établir l'existence de la violation d'une règle antidopage. Le degré de preuve établira si l'UCI ou ses fédérations nationales ont satisfait à la charge de la preuve à la satisfaction de l'instance d'audition qui appréciera le sérieux de l'allégation. Le degré de preuve, dans tous les cas, devra être plus important qu'un juste équilibre des probabilités, mais moins qu'une preuve au-delà d'un doute raisonnable. Lorsque le présent règlement antidopage confie au coureur, ou à une autre personne présumée avoir commis une violation des règles antidopage, la charge de renverser une présomption ou d'établir des circonstances ou des faits spécifiques, le degré de preuve devra être fondé sur un juste équilibre de probabilités* ».

57. S'agissant du mode d'établissement des faits et présomptions, l'article 18 du RCAD prévoit que :

> « *Les laboratoires accrédités par l'AMA ou approuvés d'une autre manière par l'AMA sont présumés avoir effectué l'analyse des échantillons et respecté les procédures de la chaîne de sécurité conformément aux standards internationaux pour les laboratoires. Le coureur peut renverser cette présomption en démontrant qu'un écart est survenu par rapport aux standards internationaux.*
>
> *Si le coureur parvient à renverser la présomption en démontrant qu'un écart est survenu par rapport aux standards internationaux pour les laboratoires, il incombera alors à l'UCI ou à la fédération nationale de démontrer que cet écart n'a pas pu être à l'origine du résultat d'analyse anormal* ».

En d'autres termes, il existe une présomption réfragable selon laquelle les laboratoires accrédités par l'AMA ont effectué les analyses dans les règles de l'art, conformément au standard international applicable aux laboratoires (le ***SIL***). Dans l'hypothèse où le coureur démontrerait l'existence d'un écart par rapport au SIL, il incomberait alors à l'UCI de démontrer que cet écart n'est pas à l'origine du résultat d'analyse anormal. Il convient donc d'appliquer ces règles afin de déterminer si Monsieur Landaluce établit la survenance d'écarts et dans l'affirmative, si l'UCI est en mesure de démontrer que l'écart invoqué n'est pas susceptible d'avoir donné lieu au résultat anormal.

58. Aux termes de l'article 15.1 du RCAD :

> « *Sont considérées comme violations des règles antidopage:*
>
> *1. La présence d'une substance interdite, de ses métabolites ou marqueurs dans un prélèvement corporel d'un coureur.*
>
> *1.1. Il incombe personnellement à chaque coureur de s'assurer qu'aucune substance interdite ne pénètre dans son organisme. Les coureurs sont responsables de toute substance interdite, de ses métabolites ou marqueurs dont la présence est décelée dans leurs prélèvements corporels. Par conséquent, il n'est pas nécessaire de faire la preuve de l'intention, de la faute, de la négligence ou de l'usage conscient de la part du coureur pour établir une violation des règles antidopage en vertu de l'article 15.1* ».

59. La substance testostérone est un stéroïde anabolisant androgène endogène, substance interdite qui figure sur la liste des interdictions 2005 sous la classe S1.1.b. La liste des interdictions prévoit que :

« Dans le cadre d'une substance interdite (selon la liste ci-dessus) pouvant être produite naturellement par le corps, un échantillon sera considéré comme contenant cette substance interdite si la concentration de la substance interdite ou de ses métabolites ou de ses marqueurs et/ou tout autre rapport pertinent dans l'échantillon du sportif s'écarte suffisamment des valeurs normales trouvées chez l'homme pour qu'une production endogène normale soit improbable. Un échantillon ne sera pas considéré comme contenant une substance interdite si le sportif prouve que la concentration de substance interdite ou de ses métabolites ou de ses marqueurs et/ou tout autre rapport pertinent dans l'échantillon du sportif est attribuable à un état physiologique ou pathologique. Dans tous les cas, et quelle que soit la concentration, le laboratoire rendra un résultat d'analyse anormal si, en se basant sur une méthode d'analyse fiable, il peut démontrer que la substance interdite est d'origine exogène.

Si le résultat de laboratoire n'est pas concluant et qu'aucune concentration décrite au paragraphe ci-dessus n'est mesurée, l'organisation antidopage responsable effectuera une investigation plus approfondie s'il existe de sérieuses indications, telles que la comparaison avec des profils stéroïdiens de référence, d'un possible usage d'une substance interdite.

Si le laboratoire a rendu un rapport T/E supérieur à quatre (4) pour un (1) dans l'urine, une investigation complémentaire est obligatoire afin de déterminer si le rapport est dû à un état physiologique ou pathologique, sauf si le laboratoire rapporte un résultat d'analyse anormal basé sur une méthode d'analyse fiable, démontrant que la substance interdite est d'origine exogène ».

B. APPLICATION DES PRINCIPES GÉNÉRAUX AU CAS PARTICULIER

60. Au cas particulier, le LNDD a utilisé la méthode d'analyse GC/C/IRMS, analyse par spectrométrie de masse du rapport isotopique. Le rapport d'analyse du LNDD a révélé la présence de testostérone de nature exogène. L'échantillon A présente un ratio T/E de 9,2, supérieur à la limite de 4 établie par l'AMA. Le rapport d'analyse du LNDD relatif à l'échantillon B confirme le résultat de l'analyse de l'échantillon A.

61. Le LNDD ayant effectué des analyses dont le résultat est positif, il appartient à Monsieur Landaluce de démontrer qu'un écart est survenu par rapport au SIL pour renverser la présomption selon laquelle ces analyses ont été réalisées dans les règles de l'art. Comme l'a rappelé à juste titre l'UCI au cours de l'Audience, Monsieur Landaluce ne pourrait se contenter d'indiquer que « *something could potentially be wrong* », mais doit bien rapporter la preuve d'une violation du SIL.

62. Pour ce faire, Monsieur Landaluce conteste la validité des analyses pratiquées par le LNDD, invoquant des manquements et des irrégularités commis lors du processus d'analyse. Il fait valoir que ces irrégularités rendaient « *invalides* » les résultats de l'analyse effectuée et a indiqué que « *ces résultats ne seront jamais considérés comme preuve de la commission d'une faute pouvant être sanctionnée* ».

63. A cette fin, Monsieur Landaluce souligne qu'il fait siennes les observations du Dr de Boer et de Madame Luisa Lurueña Sánchez, pharmacienne et spécialiste en analyse et contrôle des médicaments et drogues.

64. Madame Luisa Lurueña Sánchez observe que :

> « *Avec la documentation remise nous pouvons dire que celle-ci est insuffisante pour démontrer l'abus de testostérone ou un de ses précurseurs.*
> *Etant donnée la mauvaise, faible et inconsistante documentation analytique réalisée apportée pour démontrer l'abus de testostérone ou analogues dans cet échantillon, on considère que l'innocence du sportif peut être défendue* ».

65. Au soutien de sa prétention, Monsieur Landaluce a également versé aux débats de nombreux rapports élaborés par le Dr de Boer qui estime que plusieurs irrégularités auraient été commises par le LNDD et souligne que le SIL n'aurait pas été respecté. Dans son rapport du 12 mars 2006, le Dr de Boer observe notamment que :

> « *Le laboratoire AMA de Châtenay-Malabry n'a pas fait d'erreur concernant l'analyse chimique, mais il n'a pas respecté, sous divers aspects, les normes internationales pour les laboratoires d'analyse (ISL, International Standards for Laboratories) de l'AMA. Ainsi, plusieurs non-conformités se sont produites, ce qui, entre autres, a abouti au fait que l'analyse des échantillons « A » et « B » était loin d'être complète* ».

66. Monsieur Landaluce invoque six écarts qui auraient été commis par le laboratoire par rapport aux normes du SIL. Quatre des manquements allégués ont trait à l'appréciation scientifique qui a été faite par le laboratoire, tandis que les deux autres sont relatifs à la procédure mise en œuvre par lui. La Formation se doit d'examiner les prétendues irrégularités invoquées par Monsieur Landaluce afin de déterminer si le LNDD s'est conformé au SIL.

1. S'agissant des manquements allégués ayant trait à l'appréciation scientifique par le LNDD

a) L'argument selon lequel le dossier ne permettrait pas à un autre analyste d'évaluer les analyses réalisées et d'en interpréter les données (point 5.2.6.1 du SIL)

67. Aux termes du point 5.2.6.1 du SIL :

> « *Le Laboratoire doit disposer de procédures documentées assurant la tenue coordonnée d'un dossier relatif à chaque Échantillon analysé. Dans le cas d'un Résultat d'analyse anormal, ce dossier doit comprendre les données justifiant les conclusions présentées (voir Document Technique "Documentation du Laboratoire"). En règle générale, le dossier doit être tenu de telle sorte que, en l'absence de l'analyste, un autre analyste compétent puisse évaluer les analyses réalisées et en interpréter les données* ».

68. Le Dr de Boer a déclaré qu'il n'avait pas pu évaluer différents aspects des analyses en raison d'un manque d'information et a indiqué que les rapports relatifs aux échantillons A et B ne contenaient pas les informations permettant d'identifier les stéroïdes impliqués.

69. Le Dr Saugy a, pour sa part, indiqué que les informations permettaient d'identifier les stéroïdes impliqués. En effet, dans sa déclaration du 14 juillet 2006, le Dr Saugy a indiqué qu' « *après lecture attentive et raisonnable des paquets de documentation, j'estime que tous les aspects permettant de faire une évaluation du dossier sont présents dans celui-ci* ».

70. La Formation constate l'existence d'un désaccord entre les experts. Tandis que le Dr Saugy estime que le dossier permettait d'identifier les stéroïdes impliqués, le Dr de Boer considère quant à lui que les éléments dont il disposait étaient insuffisants. Les arbitres considèrent que le témoignage du Dr Saugy est plausible et que la démonstration faite par le Dr de Boer ne parvient par à invalider son analyse.

71. En conséquence, la Formation estime que Monsieur Landaluce n'a pas démontré l'existence d'une violation du point 5.2.6.1 du SIL et qu'il n'est donc pas parvenu à renverser la présomption selon laquelle l'analyse du LNDD avait été réalisée dans les règles de l'art, telles qu'elles résultent du point 5.2.6.1 du SIL.

b) L'argument selon lequel la substance analysée serait une substance à seuil et que l'incertitude de 0,8 adoptée par le LNDD serait insuffisante (point 5.4.4.1.3 du SIL)

72. Aux termes du point 5.4.4.1.3 du SIL :

> *« Le Laboratoire sera tenu d'atteindre, tant pour les Substances sans seuil que pour les Substances à seuil, la Limite Minimale de Performance Requise définie pour la détection et l'identification de la substance ou pour la démonstration de sa présence au-delà du seuil toléré (si nécessaire) ».*

73. Le Dr de Boer estime que la valeur de l'incertitude de 0,8 présentée par le LNDD serait insuffisante et devrait être de 1,35. Il indique par ailleurs que le fait qu'un indice d'incertitude ait été donné démontrerait que le LNDD aurait considéré être en présence d'une substance à seuil dans la mesure où l'incertitude ne serait prise en compte que pour les substances à seuil. Le Dr de Boer conclut à l'existence d'un écart par rapport au point 5.4.4.1.3 du SIL.

74. Le Prof. de Ceaurriz et le Dr Saugy estiment quant à eux que cette valeur, utilisée par de nombreux laboratoires, serait conforme au point 5.4.4.1.3 du SIL. Dans sa déclaration du 14 juillet 2006, le Dr Saugy considère qu'il ne s'agit pas d'une mesure d'une substance à seuil mais d'une méthode de confirmation basée sur des mesures quantitatives, dont le but est de démontrer l'origine qualitative du produit ingéré.

75. L'UCI fait valoir qu'il ne s'agit pas d'une substance à seuil dans la mesure où la simple présence de testostérone exogène suffit. L'analyse isotopique viserait uniquement à démontrer la nature exogène du produit, sans se préoccuper de sa quantité.

76. Au soutien de son allégation, l'UCI se réfère au point 5.4.4.3 du SIL qui indique que :

> *« Dans la plupart des cas, l'identification d'une substance interdite ou des métabolite(s) ou marqueur(s) associés suffit pour que soit déclaré un résultat d'analyse anormal. La notion d'incertitude quantitative définie dans l'ISA/CEI 17025 n'est donc pas applicable ici.* [...]
> *Dans le cas des substances à seuil, il faut considérer à la fois l'incertitude sur l'identification et l'incertitude sur la démonstration de la présence de la substance à concentration supérieure au seuil ».*

77. Dans sa déclaration du 14 juillet 2006, le Dr Saugy observe qu'au demeurant, le document technique TD2004 EAAS de l'AMA indiquerait que le résultat démontre l'administration d'un stéroïde exogène lorsque la valeur du métabolite diffère significativement de 3 ‰ ou plus de la valeur de la référence endogène utilisée.

Le Dr Saugy déclare qu'au cas particulier, l'analyse aurait révélé, tant pour l'échantillon A que pour l'échantillon B, une différence significativement supérieure à 3 ‰, à savoir 4,85 ‰ pour l'échantillon A et 4,76 ‰ pour l'échantillon B, entre la référence endogène et le métabolite retrouvé dans la testostérone.

78. La Formation constate qu'il n'existe en la matière aucune méthode précise et que les experts présents lors de l'Audience ne se sont pas accordés sur une valeur d'incertitude à prendre en compte pour l'analyse isotopique.

79. La Formation estime que Monsieur Landaluce n'a pas renversé la présomption selon laquelle le LNDD s'est conformé aux règles de l'art. En effet, les experts cités par Monsieur Landaluce, s'ils ont démontré leur désaccord avec la méthode de calcul adoptée par le LNDD, n'ont pas pour autant renversé la présomption selon laquelle les analyses se sont conformées au point 5.4.4.1.3 du SIL. La Formation estime donc que Monsieur Landaluce n'a pas rapporté la preuve d'un écart par rapport au point 5.4.4.1.3 du SIL.

c) L'argument selon lequel les informations sollicitées n'auraient pas été remises au cycliste ni à son expert (point 5.4.7.3 du SIL et des documents techniques TD2004EAAS et TD2003IDCR)

80. Monsieur Landaluce fait valoir qu'il n'aurait pas reçu les informations sollicitées à plusieurs reprises, tant par lui que par le Dr de Boer, qui auraient permis de procéder à l'évaluation de l'analyse effectuée par le LNDD.

81. L'UCI a indiqué qu'un courrier de la RFEC du 22 novembre 2005 démontrerait que Monsieur Landaluce a reçu l'intégralité des documents relatifs à l'analyse des échantillons A et B. L'UCI a également fait valoir qu'un courrier aurait été envoyé directement par le LNDD à la RFEC contenant les informations requises. Ce courrier aurait bien été reçu par la RFEC qui aurait tamponné cette correspondance, bien que la décision du CNCDD indique qu'aucune réponse de la LNDD n'aurait été reçue.

82. Par ailleurs, le Dr de Boer indique avoir reçu le 29 août 2006 un document contenant l'évaluation des temps de rétention concernant l'identification des stéroïdes impliqués dans l'analyse de l'échantillon B. Il observe toutefois qu'aucune information ne lui aurait été transmise s'agissant des données de masse spectrale et d'identification des stéroïdes impliqués dans l'analyse de l'échantillon A. Le Dr de Boer estime en

conséquence qu'il existerait un écart par rapport au point 5.4.7.3 du SIL et aux documents techniques TD2004EAAS et TD2003IDCR.

83. La Formation constate une nouvelle fois l'existence d'une divergence d'opinion entre les experts présents lors de l'Audience. Le Dr Saugy indique en effet que les informations nécessaires à l'identification de ces produits auraient été fournies par le LNDD. Cette analyse qui émane d'un expert jouissant d'une expérience non négligeable dans ce domaine est tout à fait plausible. Par conséquent, la Formation considère que Monsieur Landaluce n'a pas renversé la présomption selon laquelle le LNDD se serait conformé au point 5.4.7.3 du SIL et aux document techniques TD2004EAAS et TD2003IDCR.

*d) **Les arguments selon lesquels les valeurs ne diffèreraient pas de manière significative de trois unités delta ou plus et qu' il aurait fallu analyser trois aliquotes (document technique TD2004EAAS)***

84. Aux termes du document technique TD2004EAAS :

« Les résultats seront rapportés comme étant cohérents avec l'administration d'un stéroïde, lorsque la valeur 13C/12C mesurée pour le(s) métabolite(s) diffère de manière significative, à savoir d'au moins 3 unités delta, du stéroïde de référence urinaire sélectionné. Dans certains Echantillons, la mesure de la valeur 13C/12C du/des stéroïde(s) de référence sélectionné(s) peut ne pas être possible du fait de concentration(s) basse(s). Les résultats de telles analyses seront rapportés comme « non concluants », sauf si le rapport mesuré du (des) métabolite(s) est inférieur à - 28 ‰ sur la base du stéroïde non dérivé ».

85. D'après le Dr de Boer, ce document technique imposerait que les valeurs diffèrent de manière significative de trois unités delta ou plus. Par ailleurs, s'agissant d'une valeur seuil, le SIL imposerait l'analyse de trois aliquotes ou, dans l'hypothèse où, comme au cas particulier, un seul aliquote serait disponible, une triple analyse de celui-ci.

86. Le Prof. de Ceaurriz et le Dr Saugy estiment pour leur part qu'une mesure en triplicat de l'échantillon n'est pas nécessaire et qu'une telle exigence, qui n'existerait pas au demeurant, serait au contraire problématique dans la mesure où le volume d'urine nécessaire ne serait pas disponible. Ils indiquent par ailleurs, qu'il ne s'agirait pas d'une mesure à seuil nécessitant l'analyse de plusieurs échantillons.

87. La Formation constate, ici aussi, l'existence d'une divergence d'appréciation entre les experts et considère que Monsieur Landaluce n'a pas renversé la présomption selon laquelle le LNDD s'est conformé au document technique TD2004EAAS.

2. S'agissant des manquements allégués ayant trait à la procédure suivie par le LNDD

a) L'argument selon lequel les délais n'auraient pas été respectés (points 5.2.4.3.2.1 et 5.2.6.5 du SIL)

88. Le Dr de Boer fait valoir que le LNDD n'aurait pas respecté les délais prévus par les points 5.2.4.3.2.1 et 5.2.6.5 du SIL.

89. Aux termes du point 5.2.4.3.2.1 du SIL :

> « *Dans les cas où est demandée une analyse de confirmation sur l'Échantillon "B" de la présence d'une Substance interdite, de Métabolite(s) associé(s) ou de Marqueur(s) indiquant l'Usage d'une Substance interdite ou d'une Méthode interdite, l'analyse de l'Échantillon "B" doit intervenir dès que possible et être conclue dans les trente (30) jours suivant la notification du Résultat d'analyse anormal pour l'Échantillon "A"* ».

90. Le point 5.2.6.5 du SIL exige que :

> « *Les résultats concernant l'Échantillon "A" devront être rendus dans les dix (10) jours ouvrables à compter de la réception de l'Échantillon.* [...] *Le délai pourra être modifié par accord mutuel entre le Laboratoire et l'Autorité de contrôle* ».

91. Le Dr de Boer souligne que les résultats de l'échantillon A, qui auraient dû être rendus dans les 10 jours ouvrables à compter du 14 juin 2005, date de la réception dudit échantillon par le LNDD, ne l'auraient été que 23 jours plus tard, soit le 17 juillet 2005. Le Dr de Boer indique également que l'analyse de l'échantillon B n'aurait pas été réalisée dans le délai imparti de trente jours suivant la notification du résultat d'analyse anormal de l'échantillon A. En effet, la notification du résultat de l'analyse A a eu lieu le 28 juillet 2005. Le LNDD a proposé la date du 11 septembre 2005 pour l'ouverture de l'échantillon B, date qui, à la demande de Monsieur Landaluce, a été reportée au 21 septembre 2005, puis au 19 octobre 2005.

92. L'UCI a reconnu que les délais n'avaient pas été respectés, invoquant « *la surcharge des laboratoires, la complexité de l'analyse et la période des vacances* ».

93. Au cours de l'Audience, l'ensemble des experts présents a déclaré que les délais n'avaient eu aucun effet sur les résultats des analyses.

94. En application des règles relatives aux modes d'établissement des faits et présomptions, la Formation constate que Monsieur Landaluce est parvenu à renverser la présomption selon laquelle le LNDD se serait conformé aux points 5.2.4.3.2.1 et 5.2.6.5 du SIL en démontrant l'existence d'un écart. Une telle démonstration n'a toutefois qu'un effet

purement théorique, l'ensemble des experts présents à l'Audience ayant observé que l'écart constaté ne pouvait être à l'origine du résultat positif de l'analyse des échantillons A et B. La Formation conclut par conséquent que le résultat anormal de Monsieur Landaluce ne résulte pas de l'écart par rapport aux points 5.2.4.3.2.1 et 5.2.6.5 du SIL.

b) L'argument selon lequel l'analyste qui a effectué l'analyse de l'échantillon B était également impliquée dans l'analyse de l'échantillon A (point 5.2.4.3.2.2 du SIL)

95. Aux termes du point 5.2.4.3.2.2 du SIL :

> « *La confirmation sur l'Échantillon "B" doit être réalisée dans le même Laboratoire que celle effectuée sur l'Échantillon "A", par un analyste différent. La (les) opérateurs qui ont effectué l'analyse "A" peuvent toutefois procéder aux réglages instrumentaux, aux contrôles de conformité et à la vérification des résultats* ».

96. Monsieur Landaluce se fonde sur le rapport du Dr de Boer pour faire valoir que l'analyste qui a mené l'analyse de l'échantillon B était également impliquée dans l'analyse de l'échantillon A, en violation du point 5.2.4.3.2.2 du SIL.

97. Le Dr de Boer a indiqué que cette norme interdit qu'un même analyste touche/manipule à la fois l'échantillon A et l'échantillon B (« *touching the sample must be separate* »).

98. Au cas particulier, le rapport du 11 juin 2005 révèle que l'analyste qui a procédé à l'analyse de l'échantillon B a, dans le cadre de l'analyse A, réalisé les tâches suivantes : *package* à 4°C, reprise par acétonitrile et mise en vial, évaporation, reprise par hexane et injection CG/MS.

99. Le Président de la Formation a demandé au Dr Saugy si le point 5.2.4.3.2.2 du SIL interdisait que le même analyste touche/manipule à la fois les échantillons A et B. Le Dr Saugy a acquiescé dans les termes suivants : « *je suis d'accord que ça exclut toute manipulation de l'échantillon* ».

100. Le Président de la Formation a ensuite interrogé le Prof. de Ceaurriz afin de savoir si le même analyste avait touché/manipulé les échantillons A et B. Le Prof. de Ceaurriz a répondu :

> « *Oui. C'est clairement indiqué. Si vous voulez c'est indiqué dans notre chaîne de [sécurité]. Il n'y a pas d'ambiguïté là-dessus.* [L'analyste] *a touché les échantillons dans le A et a touché la totalité des échantillons dans le B. Il n'y a pas d'ambiguïté là-dessus* ».

101. Le Président de la Formation a alors demandé si cela était constitutif d'un écart par rapport au SIL, ce à quoi le Prof. de Ceaurriz a répondu :

> « *Tout à fait. C'est même ouvertement dans les documents du laboratoire.* [...] *par rapport à la norme, effectivement, elle a eu un contact avec l'échantillon* ».

102. Le Prof. de Ceaurriz a indiqué qu'il y avait eu 10 % de « *chevauchement pour des raisons de charge de travail entre deux personnes* ».

103. L'ensemble des experts présents à l'Audience a donc reconnu que l'analyste qui est intervenue dans le cadre des deux analyses ne s'était pas bornée à « *procéder aux réglages instrumentaux, aux contrôles de conformité et à la vérification des résultats* » et qu'un écart était constaté par rapport au point 5.2.4.3.2.2 du SIL.

104. En application des règles relatives aux modes d'établissement des faits et présomptions, la Formation constate que Monsieur Landaluce parvient une nouvelle fois à renverser la présomption selon laquelle le LNDD se serait conformé au point 5.2.4.3.2.2 du SIL, en démontrant l'existence de cet écart. Les conséquences sont cette fois décisives.

105. Il n'a pas été démontré que cela n'était pas à l'origine du résultat anormal, ni d'ailleurs que cela l'était. Il incombait toutefois à l'UCI, aux termes de l'article 18 du RCAD, de démontrer que l'écart par rapport au SIL n'était pas à l'origine de l'analyse anormale, ce qui n'a pas été fait. L'UCI s'est contentée d'indiquer dans son mémoire d'appel que :

> « *Et même si écart il y aurait eu – quod non – celui-ci n'a pu conduire au résultat d'analyse anormal, sauf s'il est établi que* [l'analyste] *avait commis une erreur ayant causé le résultat d'analyse anormal, quod non* ».

106. De même lors de l'Audience, l'UCI a simplement observé :

> « *Quant aux écarts avec le standard qui ont été signalés, je crois pouvoir conclure que s'il y en a eu, ils ne sont pas significatifs et ne sont certainement pas à l'origine du résultat* ».

107. Or, il appartenait bien à l'UCI de démontrer que le non-respect du point 5.2.4.3.2.2 du SIL n'était pas à l'origine du résultat anormal. Dans la mesure où l'UCI n'est pas parvenue à ce faire, la Formation ne peut que conclure à la mise hors de cause de Monsieur Landaluce.

108. Il est vrai qu'une sentence ayant eu à se prononcer sur cette question de la double intervention d'un même analyste dans le cadre de l'examen des échantillons A et B, dans l'affaire Wang Lu Na et autres contre FINA (TAS 98/208, sentence du 22 décembre 1998, Wang Lu Na et autres / FINA), a confirmé la suspension de quatre nageuses.

L'apport de cette sentence est toutefois très marginal pour les besoins de la présente affaire, et ce pour trois raisons. Premièrement, la réglementation applicable est différente. Ensuite, la sentence indique expressément (*paragraphe 5.22*) que le rôle joué par les analystes concernés n'était pas clairement établi : les arbitres ont déclaré qu'ils étaient « *unpersuaded* » par l'argument selon lequel les analystes « *were involved in anything other then the tests of the controls* » par opposition aux « *A samples themselves* ». Or, au cas particulier, comme cela a été démontré précédemment, il y a identité des analystes ayant manipulé les échantillons A et B. Enfin, les représentants des nageuses avaient, par leurs signatures, reconnu que la procédure prévue par le règlement de la FINA avait été respectée par le laboratoire. En l'espèce, l'UCI ne s'est pas attachée à rapporter la preuve de ce que Monsieur Landaluce avait approuvé la procédure suivie.

109. Bien que conscient des impératifs de coûts et d'organisation auxquels sont confrontés les laboratoires, la Formation se doit de veiller au respect de règles fondamentales, compte tenu des implications que sa décision pourrait avoir sur la réputation, et partant, la carrière de l'athlète, si une sanction disciplinaire était prononcée à son encontre.

110. La Formation n'est pas sans savoir que la norme qui impose qu'un analyste différent procède à l'analyse de l'échantillon B a fait l'objet de discussions vives entre l'AMA et les responsables de laboratoires. Ces derniers font valoir que cette règle complique déraisonnablement le fonctionnement des laboratoires, sans pour autant qu'il soit démontré qu'elle apporte une protection supplémentaire des athlètes contrôlés. Il serait assurément irréaliste d'exiger qu'un même analyste effectue l'intégralité d'une analyse du début à la fin. En effet, les analyses peuvent, lorsqu'elles portent sur certaines substances, durer plusieurs jours au cours desquels des procédés sont machinalement mis en œuvre. Les analystes effectuent de nombreuses tâches, passant de l'une à l'autre, afin que plusieurs analyses puissent être réalisées simultanément. S'il est envisageable d'exiger d'un grand laboratoire comptant un effectif de 50 à 100 personnes, que le travail y soit organisé de façon à exclure de l'analyse de l'échantillon B l'analyste qui aurait effectué l'analyse de l'échantillon A – bien que cela constitue un facteur de complication non négligeable dont les laboratoires souhaiteraient se dispenser – une telle exigence constituerait un facteur de complication majeur pour un laboratoire de moindre taille.

111. Il est quasiment impossible de prouver un fait négatif, soit en l'occurrence que l'intervention du même analyste dans le cadre des deux analyses n'a pas pu affecter le résultat. Certains responsables de laboratoire estiment par conséquent que cette règle serait trop rigide ; en réalité, une protection suffisante des athlètes est déjà assurée dans la mesure où le système d'identification des échantillons par codes permet de s'assurer de ce que leur identité n'est pas connue des analystes.

112. Ce raisonnement, bien que rationnel et plausible, échoue devant le TAS pour une raison très simple : les arbitres ne créent pas les règles, ils les appliquent. Cela est d'autant plus vrai que les auteurs du règlement antidopage ont conservé la règle qui impose qu'un autre analyste soit chargé de l'analyse de l'échantillon B, alors même qu'ils avaient entendu les observations des responsables de laboratoires. Les règles peuvent certes être modifiées ou affinées, mais tel n'est pas le rôle du TAS.

113. La règle applicable est claire et dépourvue de toute souplesse. Les arbitres du TAS n'ont pas pour mission de modifier les règles ni vocation à s'approprier un pouvoir discrétionnaire lorsque aucun texte ne les autorise à le faire.

114. L'on notera en passant que si les cas où le TAS conclut à la mise hors de cause d'un athlète dans l'hypothèse où un laboratoire n'aurait pas respecté les protocoles sont peu fréquents, cela s'explique par le fait que les autorités disciplinaires connaissent la sévérité des arbitres à cet égard et renoncent à poursuivre les athlètes – même en présence de cas très suspects – lorsque les analyses n'ont pas été réalisées dans le respect des règles de l'art.

115. La Formation tient à souligner la bonne foi du personnel du LNDD qui n'est pas en cause. Les arbitres n'ont aucune raison de douter de l'explication fournie par le Prof. De Ceaurriz selon laquelle le « *chevauchement* » des opérations effectuées par les analystes était dû à une surcharge de travail au sein du LNDD. Il a par ailleurs fait observer que des personnes malveillantes et complices auraient couvert leurs agissements en rédigeant les rapports relatifs aux analyses de façon à ce qu'aucun manquement éventuel ne puisse leur être reproché. Au cas présent, c'est tout le contraire ; l'athlète obtient gain de cause sur la base des informations dont disposait le laboratoire et qui ont été loyalement communiquées.

116. Il convient encore de préciser que les paragraphes 95 à 115 de cette décision ont été adoptés à la majorité de la Formation arbitrale, selon l'article R59 du Code, et que

l'opinion minoritaire de l'arbitre dissident a été dûment considérée et débattue lors des délibérations.

117. En tout état de cause, la présente sentence ne constitue pas une déclaration d'innocence de Monsieur Landaluce au regard des règles antidopage. Monsieur Landaluce bénéficie simplement d'une règle formelle et pourtant fondamentale, tendant à garantir les droits des personnes soumises à des contrôles antidopage.

VI. S'AGISSANT DES FRAIS

118. En ce qui concerne les litiges disciplinaires à caractère international jugés en appel, tel que celui qui nous occupe, l'article R65 du Code prévoit ce qui suit:

> « *Sous réserve des articles R65.2 et R65.4, la procédure est gratuite.*
> *Les frais et honoraires des arbitres, calculés selon le barème du TAS, ainsi que les frais du TAS sont à la charge du TAS.*
> *Lors du dépôt de la déclaration d'appel, l'appelant verse un droit de Greffe minimum de CHF 500.—, faute de quoi le TAS ne procède pas et l'appel est réputé retiré. Cet émolument reste acquis au TAS.*
> *Les frais des parties, témoins, experts et interprètes sont avancés par les parties. La Formation en attribue la charge dans la sentence en tenant compte du résultat de la procédure, du comportement et des ressources financières des parties.*
> *Si l'ensemble des circonstances le justifie, le Président de la Chambre arbitrale d'appel peut, d'office ou sur demande du Président de la Formation, appliquer les articles R64.4 et R64.5, 1ère phrase, à une procédure arbitrale d'appel* ».

119. Les articles R64.4 et R64.5 du Code prévoient ce qui suit :

> « *A la fin de la procédure, le Greffe arrête le montant définitif des frais de l'arbitrage qui comprennent le droit de Greffe du TAS, les frais administratifs du TAS calculés selon le barème du TAS, les frais et honoraires des arbitres calculés selon le barème du TAS, une participation aux débours du TAS et les frais de témoins, experts et interprètes. Le décompte final des frais de l'arbitrage peut soit figurer dans la sentence, soit être communiqué aux parties séparément* ».
> « *La sentence arbitrale détermine quelle partie supporte les frais de l'arbitrage ou dans quelle proportion les parties en partagent la charge. La sentence condamne en principe la partie qui succombe à une contribution aux frais d'avocat de l'autre partie, ainsi qu'aux frais encourus par cette dernière pour les besoins de la procédure, notamment les frais de témoins et d'interprète. Lors de la condamnation aux frais d'arbitrage et d'avocat, la Formation tient compte du résultat de la procédure, ainsi que du comportement et des ressources des parties* ».

120. En l'espèce, l'appel de l'UCI est rejeté et la décision dont appel doit être confirmée. Cet arbitrage étant gratuit pour les parties, dès lors qu'il concerne un litige de nature

disciplinaire à caractère international, il s'agit de déterminer si et dans quelle mesure Monsieur Landaluce et la RFEC ont droit à l'octroi d'une indemnité pour leurs frais d'avocat et pour les autres frais relatifs à la présente procédure d'arbitrage. Après avoir dûment considéré l'ensemble des circonstances de l'affaire, notamment le grand nombre d'arguments futiles invoqués par les défendeurs, la Formation considère qu'il est équitable de laisser à la charge de chacune des parties les frais encourus dans le cadre de cette procédure.

VII. S'AGISSANT DE LA CONFIDENTIALITE

121. Aux termes de l'article R59 alinéa 6 du Code de l'arbitrage en matière de sport :

> « *La sentence, un résumé et/ou un communiqué de presse faisant état de l'issue de la procédure est publié par le TAS, sauf si les parties conviennent que l'arbitrage doit rester confidentiel* ».

122. Monsieur Landaluce a indiqué qu'il souhaitait que la procédure demeure confidentielle et qu'aucun communiqué de presse faisant état de la procédure ne soit publié par le TAS.

123. L'UCI a indiqué que la procédure initiée à l'encontre de Monsieur Landaluce était d'ores et déjà connue du public, celle-ci ayant fait l'objet d'un communiqué de presse par le TAS.

124. Lors de l'Audience, l'UCI, Monsieur Landaluce et la RFEC ne sont pas parvenus à un accord concernant le caractère confidentiel ou non de la présente procédure. Dans ces circonstances, le TAS pourra, s'il le juge opportun, publier un résumé et/ou un communiqué de presse faisant état de l'issue de la présente procédure.

* * * * * * * * * * *

PAR CES MOTIFS

Le Tribunal Arbitral du Sport prononce :

1. Le Tribunal Arbitral du Sport est compétent pour connaître de l'appel interjeté par l'Union Cycliste Internationale.

2. L'appel formé le 26 juin 2006 par l'Union Cycliste Internationale contre la décision rendue le 5 mai 2006 par le Comité Nacional de Competición y Disciplina Deportiva de la Real Federación Española de Ciclismo est rejeté.

3. La sentence est rendue sans frais, à l'exception de l'émolument de greffe de CHF 500 versé en début de procédure par l'Union Cycliste Internationale, qui reste acquis au TAS.

4. Chaque partie garde ses frais d'avocat et autres frais découlant du présent arbitrage.

Lausanne, le 19 décembre 2006

Le TRIBUNAL ARBITRAL DU SPORT

Le Président de la Formation

Jan Paulsson

Olivier Carrard
Arbitre

José Juan Pintó
Arbitre

Shaparak Saleh
Greffier ad hoc

TAB 23

INTERNATIONAL STANDARD

ISO/IEC 17025

First edition
1999-12-15

General requirements for the competence of testing and calibration laboratories

Prescriptions générales concernant la compétence des laboratoires d'étalonnages et d'essais

Reference number
ISO/IEC 17025:1999(E)

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Foreword

ISO (the International Organization for Standardization) and IEC (the International Electrotechnical Commission) form the specialized system for worldwide standardization. National bodies that are members of ISO or IEC participate in the development of International Standards through technical committees established by the respective organization to deal with particular fields of technical activity. ISO and IEC technical committees collaborate in fields of mutual interest. Other international organizations, governmental and non-governmental, in liaison with ISO and IEC, also take part in the work.

International Standards are drafted in accordance with the rules given in the ISO/IEC Directives, Part 3.

Draft International Standards adopted by the technical committees are circulated to member bodies for voting. Publication as an International Standard requires approval by at least 75 % of the member bodies casting a vote.

Attention is drawn to the possibility that some of the elements of this International Standard may be the subject of patent rights. ISO and IEC shall not be held responsible for identifying any or all such patent rights.

International Standard ISO/IEC 17025 was prepared by ISO/CASCO, *Committee on Conformity Assessment.*

This first edition of ISO/IEC 17025 cancels and replaces ISO/IEC Guide 25:1990.

Annexes A and B of this International Standard are for information only.

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Introduction

This International Standard has been produced as the result of extensive experience in the implementation of ISO/IEC Guide 25 and EN 45001, both of which it now replaces. It contains all of the requirements that testing and calibration laboratories have to meet if they wish to demonstrate that they operate a quality system, are technically competent, and are able to generate technically valid results.

Accreditation bodies that recognize the competence of testing and calibration laboratories should use this International Standard as the basis for their accreditation. Clause 4 specifies the requirements for sound management. Clause 5 specifies the requirements for technical competence for the type of tests and/or calibrations the laboratory undertakes.

The growth in use of quality systems generally has increased the need to ensure that laboratories which form part of larger organizations or offer other services can operate to a quality system that is seen as compliant with ISO 9001 or ISO 9002 as well as with this International Standard. Care has been taken, therefore, to incorporate all those requirements of ISO 9001 and ISO 9002 that are relevant to the scope of testing and calibration services that are covered by the laboratory's quality system.

Testing and calibration laboratories that comply with this International Standard will therefore also operate in accordance with ISO 9001 or ISO 9002.

Certification against ISO 9001 and ISO 9002 does not of itself demonstrate the competence of the laboratory to produce technically valid data and results.

The acceptance of testing and calibration results between countries should be facilitated if laboratories comply with this International Standard and if they obtain accreditation from bodies which have entered into mutual recognition agreements with equivalent bodies in other countries using this International Standard.

The use of this International Standard will facilitate cooperation between laboratories and other bodies, and assist in the exchange of information and experience, and in the harmonization of standards and procedures.

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General requirements for the competence of testing and calibration laboratories

1 Scope

1.1 This International Standard specifies the general requirements for the competence to carry out tests and/or calibrations, including sampling. It covers testing and calibration performed using standard methods, non-standard methods, and laboratory-developed methods.

1.2 This International Standard is applicable to all organizations performing tests and/or calibrations. These include, for example, first-, second- and third-party laboratories, and laboratories where testing and/or calibration forms part of inspection and product certification.

This International Standard is applicable to all laboratories regardless of the number of personnel or the extent of the scope of testing and/or calibration activities. When a laboratory does not undertake one or more of the activities covered by this International Standard, such as sampling and the design/development of new methods, the requirements of those clauses do not apply.

1.3 The notes given provide clarification of the text, examples and guidance. They do not contain requirements and do not form an integral part of this International Standard.

1.4 This International Standard is for use by laboratories in developing their quality, administrative and technical systems that govern their operations. Laboratory clients, regulatory authorities and accreditation bodies may also use it in confirming or recognizing the competence of laboratories.

1.5 Compliance with regulatory and safety requirements on the operation of laboratories is not covered by this International Standard.

1.6 If testing and calibration laboratories comply with the requirements of this International Standard they will operate a quality system for their testing and calibration activities that also meets the requirements of ISO 9001 when they engage in the design/development of new methods, and/or develop test programmes combining standard and non-standard test and calibration methods, and ISO 9002 when they only use standard methods. Annex A provides nominal cross-references between this International Standard and ISO 9001 and ISO 9002. ISO/IEC 17025 covers several technical competence requirements that are not covered by ISO 9001 and ISO 9002.

NOTE 1 It might be necessary to explain or interpret certain requirements in this International Standard to ensure that the requirements are applied in a consistent manner. Guidance for establishing applications for specific fields, especially for accreditation bodies (see ISO/IEC Guide 58:1993, 4.1.3) is given in annex B.

NOTE 2 If a laboratory wishes accreditation for part or all of its testing and calibration activities, it should select an accreditation body that operates in accordance with ISO/IEC Guide 58.

2 Normative references

The following normative documents contain provisions which, through reference in this text, constitute provisions of this International Standard. For dated references, subsequent amendments to, or revisions of, any of these publications do not apply. However, parties to agreements based on this International Standard are encouraged to investigate the possibility of applying the most recent editions of the normative documents indicated below. For

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undated references, the latest edition of the normative document referred to applies. Members of ISO and IEC maintain registers of currently valid International Standards.

ISO 9001:1994, *Quality systems — Model for quality assurance in design, development, production, installation and servicing.*

ISO 9002:1994, *Quality systems — Model for quality assurance in production, installation and servicing.*

ISO/IEC Guide 2, *General terms and their definitions concerning standardization and related activities.*

VIM, *International vocabulary of basic and general terms in metrology*, issued by BIPM, IEC, IFCC, ISO, IUPAC, IUPAP and OIML.

NOTE 1 Further related standards, guides, etc. on subjects included in this International Standard are given in the bibliography.

NOTE 2 It should be noted that when this International Standard was being developed, the revisions of ISO 9001 and ISO 9002 were anticipated to be published in late 2000 as a merged ISO 9001:2000. This is no longer the case.

3 Terms and definitions

For the purposes of this International Standard, the relevant terms and definitions given in ISO/IEC Guide 2 and VIM apply.

NOTE General definitions related to quality are given in ISO 8402, whereas ISO/IEC Guide 2 gives definitions specifically related to standardization, certification and laboratory accreditation. Where different definitions are given in ISO 8402, the definitions in ISO/IEC Guide 2 and VIM are preferred.

4 Management requirements

4.1 Organization

4.1.1 The laboratory or the organization of which it is part shall be an entity that can be held legally responsible.

4.1.2 It is the responsibility of the laboratory to carry out its testing and calibration activities in such a way as to meet the requirements of this International Standard and to satisfy the needs of the client, the regulatory authorities or organizations providing recognition.

4.1.3 The laboratory management system shall cover work carried out in the laboratory's permanent facilities, at sites away from its permanent facilities, or in associated temporary or mobile facilities.

4.1.4 If the laboratory is part of an organization performing activities other than testing and/or calibration, the responsibilities of key personnel in the organization that have an involvement or influence on the testing and/or calibration activities of the laboratory shall be defined in order to identify potential conflicts of interest.

NOTE 1 Where a laboratory is part of a larger organization, the organizational arrangements should be such that departments having conflicting interests, such as production, commercial marketing or financing do not adversely influence the laboratory's compliance with the requirements of this International Standard.

NOTE 2 If the laboratory wishes to be recognized as a third-party laboratory, it should be able to demonstrate that it is impartial and that it and its personnel are free from any undue commercial, financial and other pressures which might influence their technical judgement. The third-party testing or calibration laboratory should not engage in any activities that may endanger the trust in its independence of judgement and integrity in relation to its testing or calibration activities.

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4.1.5 The laboratory shall

a) have managerial and technical personnel with the authority and resources needed to carry out their duties and to identify the occurrence of departures from the quality system or from the procedures for performing tests and/or calibrations, and to initiate actions to prevent or minimize such departures (see also 5.2);

b) have arrangements to ensure that its management and personnel are free from any undue internal and external commercial, financial and other pressures and influences that may adversely affect the quality of their work;

c) have policies and procedures to ensure the protection of its clients' confidential information and proprietary rights, including procedures for protecting the electronic storage and transmission of results;

d) have policies and procedures to avoid involvement in any activities that would diminish confidence in its competence, impartiality, judgement or operational integrity;

e) define the organization and management structure of the laboratory, its place in any parent organization, and the relationships between quality management, technical operations and support services;

f) specify the responsibility, authority and interrelationships of all personnel who manage, perform or verify work affecting the quality of the tests and/or calibrations;

g) provide adequate supervision of testing and calibration staff, including trainees, by persons familiar with methods and procedures, purpose of each test and/or calibration, and with the assessment of the test or calibration results;

h) have technical management which has overall responsibility for the technical operations and the provision of the resources needed to ensure the required quality of laboratory operations;

i) appoint a member of staff as quality manager (however named) who, irrespective of other duties and responsibilities, shall have defined responsibility and authority for ensuring that the quality system is implemented and followed at all times; the quality manager shall have direct access to the highest level of management at which decisions are made on laboratory policy or resources;

j) appoint deputies for key managerial personnel (see note).

NOTE Individuals may have more than one function and it may be impractical to appoint deputies for every function.

4.2 Quality system

4.2.1 The laboratory shall establish, implement and maintain a quality system appropriate to the scope of its activities. The laboratory shall document its policies, systems, programmes, procedures and instructions to the extent necessary to assure the quality of the test and/or calibration results. The system's documentation shall be communicated to, understood by, available to, and implemented by the appropriate personnel.

4.2.2 The laboratory's quality system policies and objectives shall be defined in a quality manual (however named). The overall objectives shall be documented in a quality policy statement. The quality policy statement shall be issued under the authority of the chief executive. It shall include at least the following:

a) the laboratory management's commitment to good professional practice and to the quality of its testing and calibration in servicing its clients;

b) the management's statement of the laboratory's standard of service;

c) the objectives of the quality system;

d) a requirement that all personnel concerned with testing and calibration activities within the laboratory familiarize themselves with the quality documentation and implement the policies and procedures in their work; and

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e) the laboratory management's commitment to compliance with this International Standard.

NOTE The quality policy statement should be concise and may include the requirement that tests and/or calibrations shall always be carried out in accordance with stated methods and clients' requirements. When the test and/or calibration laboratory is part of a larger organization, some quality policy elements may be in other documents.

4.2.3 The quality manual shall include or make reference to the supporting procedures including technical procedures. It shall outline the structure of the documentation used in the quality system.

4.2.4 The roles and responsibilities of technical management and the quality manager, including their responsibility for ensuring compliance with this International Standard, shall be defined in the quality manual.

4.3 Document control

4.3.1 General

The laboratory shall establish and maintain procedures to control all documents that form part of its quality system (internally generated or from external sources), such as regulations, standards, other normative documents, test and/or calibration methods, as well as drawings, software, specifications, instructions and manuals.

NOTE 1 In this context "document" could be policy statements, procedures, specifications, calibration tables, charts, text books, posters, notices, memoranda, software, drawings, plans, etc. These may be on various media, whether hard copy or electronic, and they may be digital, analog, photographic or written.

NOTE 2 The control of data related to testing and calibration is covered in 5.4.7. The control of records is covered in 4.12.

4.3.2 Document approval and issue

4.3.2.1 All documents issued to personnel in the laboratory as part of the quality system shall be reviewed and approved for use by authorized personnel prior to issue. A master list or an equivalent document control procedure identifying the current revision status and distribution of documents in the quality system shall be established and be readily available to preclude the use of invalid and/or obsolete documents.

4.3.2.2 The procedure(s) adopted shall ensure that:

a) authorized editions of appropriate documents are available at all locations where operations essential to the effective functioning of the laboratory are performed;

b) documents are periodically reviewed and, where necessary, revised to ensure continuing suitability and compliance with applicable requirements;

c) invalid or obsolete documents are promptly removed from all points of issue or use, or otherwise assured against unintended use;

d) obsolete documents retained for either legal or knowledge preservation purposes are suitably marked.

4.3.2.3 Quality system documents generated by the laboratory shall be uniquely identified. Such identification shall include the date of issue and/or revision identification, page numbering, the total number of pages or a mark to signify the end of the document, and the issuing authority(ies).

4.3.3 Document changes

4.3.3.1 Changes to documents shall be reviewed and approved by the same function that performed the original review unless specifically designated otherwise. The designated personnel shall have access to pertinent background information upon which to base their review and approval.

4.3.3.2 Where practicable, the altered or new text shall be identified in the document or the appropriate attachments.

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4.3.3.3 If the laboratory's documentation control system allows for the amendment of documents by hand pending the re-issue of the documents, the procedures and authorities for such amendments shall be defined. Amendments shall be clearly marked, initialled and dated. A revised document shall be formally re-issued as soon as practicable.

4.3.3.4 Procedures shall be established to describe how changes in documents maintained in computerized systems are made and controlled.

4.4 Review of requests, tenders and contracts

4.4.1 The laboratory shall establish and maintain procedures for the review of requests, tenders and contracts. The policies and procedures for these reviews leading to a contract for testing and/or calibration shall ensure that:

a) the requirements, including the methods to be used, are adequately defined, documented and understood (see 5.4.2);

b) the laboratory has the capability and resources to meet the requirements;

c) the appropriate test and/or calibration method is selected and capable of meeting the clients' requirements (see 5.4.2).

Any differences between the request or tender and the contract shall be resolved before any work commences. Each contract shall be acceptable both to the laboratory and the client.

NOTE 1 The request, tender and contract review should be conducted in a practical and efficient manner, and the effect of financial, legal and time schedule aspects should be taken into account. For internal clients, reviews of requests, tenders and contracts can be performed in a simplified way.

NOTE 2 The review of capability should establish that the laboratory possesses the necessary physical, personnel and information resources, and that the laboratory's personnel have the skills and expertise necessary for the performance of the tests and/or calibrations in question. The review may also encompass results of earlier participation in interlaboratory comparisons or proficiency testing and/or the running of trial test or calibration programmes using samples or items of known value in order to determine uncertainties of measurement, limits of detection, confidence limits, etc.

NOTE 3 A contract may be any written or oral agreement to provide a client with testing and/or calibration services.

4.4.2 Records of reviews, including any significant changes, shall be maintained. Records shall also be maintained of pertinent discussions with a client relating to the client's requirements or the results of the work during the period of execution of the contract.

NOTE For review of routine and other simple tasks, the date and the identification (e.g. the initials) of the person in the laboratory responsible for carrying out the contracted work are considered adequate. For repetitive routine tasks, the review need be made only at the initial enquiry stage or on granting of the contract for on-going routine work performed under a general agreement with the client, provided that the client's requirements remain unchanged. For new, complex or advanced testing and/or calibration tasks, a more comprehensive record should be maintained.

4.4.3 The review shall also cover any work that is subcontracted by the laboratory.

4.4.4 The client shall be informed of any deviation from the contract.

4.4.5 If a contract needs to be amended after work has commenced, the same contract review process shall be repeated and any amendments shall be communicated to all affected personnel.

4.5 Subcontracting of tests and calibrations

4.5.1 When a laboratory subcontracts work whether because of unforeseen reasons (e.g. workload, need for further expertise or temporary incapacity) or on a continuing basis (e.g. through permanent subcontracting, agency or franchising arrangements), this work shall be placed with a competent subcontractor. A competent subcontractor is one that, for example, complies with this International Standard for the work in question.

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4.5.2 The laboratory shall advise the client of the arrangement in writing and, when appropriate, gain the approval of the client, preferably in writing.

4.5.3 The laboratory is responsible to the client for the subcontractor's work, except in the case where the client or a regulatory authority specifies which subcontractor is to be used.

4.5.4 The laboratory shall maintain a register of all subcontractors that it uses for tests and/or calibrations and a record of the evidence of compliance with this International Standard for the work in question.

4.6 Purchasing services and supplies

4.6.1 The laboratory shall have a policy and procedure(s) for the selection and purchasing of services and supplies it uses that affect the quality of the tests and/or calibrations. Procedures shall exist for the purchase, reception and storage of reagents and laboratory consumable materials relevant for the tests and calibrations.

4.6.2 The laboratory shall ensure that purchased supplies and reagents and consumable materials that affect the quality of tests and/or calibrations are not used until they have been inspected or otherwise verified as complying with standard specifications or requirements defined in the methods for the tests and/or calibrations concerned. These services and supplies used shall comply with specified requirements. Records of actions taken to check compliance shall be maintained.

4.6.3 Purchasing documents for items affecting the quality of laboratory output shall contain data describing the services and supplies ordered. These purchasing documents shall be reviewed and approved for technical content prior to release.

NOTE The description may include type, class, grade, precise identification, specifications, drawings, inspection instructions, other technical data including approval of test results, the quality required and the quality system standard under which they were made.

4.6.4 The laboratory shall evaluate suppliers of critical consumables, supplies and services which affect the quality of testing and calibration, and shall maintain records of these evaluations and list those approved.

4.7 Service to the client

The laboratory shall afford clients or their representatives cooperation to clarify the client's request and to monitor the laboratory's performance in relation to the work performed, provided that the laboratory ensures confidentiality to other clients.

NOTE 1 Such cooperation may include:

a) providing the client or the client's representative reasonable access to relevant areas of the laboratory for the witnessing of tests and/or calibrations performed for the client;

b) preparation, packaging, and dispatch of test and/or calibration items needed by the client for verification purposes.

NOTE 2 Clients value the maintenance of good communication, advice and guidance in technical matters, and opinions and interpretations based on results. Communication with the client, especially in large assignments, should be maintained throughout the work. The laboratory should inform the client of any delays or major deviations in the performance of the tests and/or calibrations.

NOTE 3 Laboratories are encouraged to obtain other feedback, both positive and negative, from their clients (e.g. client surveys). The feedback should be used to improve the quality system, testing and calibration activities and client service.

4.8 Complaints

The laboratory shall have a policy and procedure for the resolution of complaints received from clients or other parties. Records shall be maintained of all complaints and of the investigations and corrective actions taken by the laboratory (see also 4.10).

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4.9 Control of nonconforming testing and/or calibration work

4.9.1 The laboratory shall have a policy and procedures that shall be implemented when any aspect of its testing and/or calibration work, or the results of this work, do not conform to its own procedures or the agreed requirements of the client. The policy and procedures shall ensure that:

a) the responsibilities and authorities for the management of nonconforming work are designated and actions (including halting of work and withholding of test reports and calibration certificates, as necessary) are defined and taken when nonconforming work is identified;

b) an evaluation of the significance of the nonconforming work is made;

c) corrective actions are taken immediately, together with any decision about the acceptability of the nonconforming work;

d) where necessary, the client is notified and work is recalled;

e) the responsibility for authorizing the resumption of work is defined.

NOTE Identification of nonconforming work or problems with the quality system or with testing and/or calibration activities can occur at various places within the quality system and technical operations. Examples are customer complaints, quality control, instrument calibration, checking of consumable materials, staff observations or supervision, test report and calibration certificate checking, management reviews and internal or external audits.

4.9.2 Where the evaluation indicates that the nonconforming work could recur or that there is doubt about the compliance of the laboratory's operations with its own policies and procedures, the corrective action procedures given in 4.10 shall be promptly followed.

4.10 Corrective action

4.10.1 General

The laboratory shall establish a policy and procedure and shall designate appropriate authorities for implementing corrective action when nonconforming work or departures from the policies and procedures in the quality system or technical operations have been identified.

NOTE A problem with the quality system or with the technical operations of the laboratory may be identified through a variety of activities, such as control of nonconforming work, internal or external audits, management reviews, feedback from clients or staff observations.

4.10.2 Cause analysis

The procedure for corrective action shall start with an investigation to determine the root cause(s) of the problem.

NOTE Cause analysis is the key and sometimes the most difficult part in the corrective action procedure. Often the root cause is not obvious and thus a careful analysis of all potential causes of the problem is required. Potential causes could include client requirements, the samples, sample specifications, methods and procedures, staff skills and training, consumables, or equipment and its calibration.

4.10.3 Selection and implementation of corrective actions

Where corrective action is needed, the laboratory shall identify potential corrective actions. It shall select and implement the action(s) most likely to eliminate the problem and to prevent recurrence.

Corrective actions shall be to a degree appropriate to the magnitude and the risk of the problem.

The laboratory shall document and implement any required changes resulting from corrective action investigations.

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4.10.4 Monitoring of corrective actions

The laboratory shall monitor the results to ensure that the corrective actions taken have been effective.

4.10.5 Additional audits

Where the identification of nonconformances or departures casts doubts on the laboratory's compliance with its own policies and procedures, or on its compliance with this International Standard, the laboratory shall ensure that the appropriate areas of activity are audited in accordance with 4.13 as soon as possible.

NOTE Such additional audits often follow the implementation of the corrective actions to confirm their effectiveness. An additional audit should be necessary only when a serious issue or risk to the business is identified.

4.11 Preventive action

4.11.1 Needed improvements and potential sources of nonconformances, either technical or concerning the quality system, shall be identified. If preventive action is required, action plans shall be developed, implemented and monitored to reduce the likelihood of the occurrence of such nonconformances and to take advantage of the opportunities for improvement.

4.11.2 Procedures for preventive actions shall include the initiation of such actions and application of controls to ensure that they are effective.

NOTE 1 Preventive action is a pro-active process to identify opportunities for improvement rather than a reaction to the identification of problems or complaints.

NOTE 2 Apart from the review of the operational procedures, the preventive action might involve analysis of data, including trend and risk analyses and proficiency-testing results.

4.12 Control of records

4.12.1 General

4.12.1.1 The laboratory shall establish and maintain procedures for identification, collection, indexing, access, filing, storage, maintenance and disposal of quality and technical records. Quality records shall include reports from internal audits and management reviews as well as records of corrective and preventive actions.

4.12.1.2 All records shall be legible and shall be stored and retained in such a way that they are readily retrievable in facilities that provide a suitable environment to prevent damage or deterioration and to prevent loss. Retention times of records shall be established.

NOTE Records may be in any media, such as hard copy or electronic media.

4.12.1.3 All records shall be held secure and in confidence.

4.12.1.4 The laboratory shall have procedures to protect and back-up records stored electronically and to prevent unauthorized access to or amendment of these records.

4.12.2 Technical records

4.12.2.1 The laboratory shall retain records of original observations, derived data and sufficient information to establish an audit trail, calibration records, staff records and a copy of each test report or calibration certificate issued, for a defined period. The records for each test or calibration shall contain sufficient information to facilitate, if possible, identification of factors affecting the uncertainty and to enable the test or calibration to be repeated under conditions as close as possible to the original. The records shall include the identity of personnel responsible for the sampling, performance of each test and/or calibration and checking of results.

NOTE 1 In certain fields it may be impossible or impractical to retain records of all original observations.

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NOTE 2 Technical records are accumulations of data (see 5.4.7) and information which result from carrying out tests and/or calibrations and which indicate whether specified quality or process parameters are achieved. They may include forms, contracts, work sheets, work books, check sheets, work notes, control graphs, external and internal test reports and calibration certificates, clients' notes, papers and feedback.

4.12.2.2 Observations, data and calculations shall be recorded at the time they are made and shall be identifiable to the specific task.

4.12.2.3 When mistakes occur in records, each mistake shall be crossed out, not erased, made illegible or deleted, and the correct value entered alongside. All such alterations to records shall be signed or initialled by the person making the correction. In the case of records stored electronically, equivalent measures shall be taken to avoid loss or change of original data.

4.13 Internal audits

4.13.1 The laboratory shall periodically, and in accordance with a predetermined schedule and procedure, conduct internal audits of its activities to verify that its operations continue to comply with the requirements of the quality system and this International Standard. The internal audit programme shall address all elements of the quality system, including the testing and/or calibration activities. It is the responsibility of the quality manager to plan and organize audits as required by the schedule and requested by management. Such audits shall be carried out by trained and qualified personnel who are, wherever resources permit, independent of the activity to be audited.

NOTE The cycle for internal auditing should normally be completed in one year.

4.13.2 When audit findings cast doubt on the effectiveness of the operations or on the correctness or validity of the laboratory's test or calibration results, the laboratory shall take timely corrective action, and shall notify clients in writing if investigations show that the laboratory results may have been affected.

4.13.3 The area of activity audited, the audit findings and corrective actions that arise from them shall be recorded.

4.13.4 Follow-up audit activities shall verify and record the implementation and effectiveness of the corrective action taken.

4.14 Management reviews

4.14.1 In accordance with a predetermined schedule and procedure, the laboratory's executive management shall periodically conduct a review of the laboratory's quality system and testing and/or calibration activities to ensure their continuing suitability and effectiveness, and to introduce necessary changes or improvements. The review shall take account of:

— the suitability of policies and procedures;

— reports from managerial and supervisory personnel;

— the outcome of recent internal audits;

— corrective and preventive actions;

— assessments by external bodies;

— the results of interlaboratory comparisons or proficiency tests;

— changes in the volume and type of the work;

— client feedback;

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— complaints;

— other relevant factors, such as quality control activities, resources and staff training.

NOTE 1 A typical period for conducting a management review is once every 12 months.

NOTE 2 Results should feed into the laboratory planning system and should include the goals, objectives and action plans for the coming year.

NOTE 3 A management review includes consideration of related subjects at regular management meetings.

4.14.2 Findings from management reviews and the actions that arise from them shall be recorded. The management shall ensure that those actions are carried out within an appropriate and agreed timescale.

5 Technical requirements

5.1 General

5.1.1 Many factors determine the correctness and reliability of the tests and/or calibrations performed by a laboratory. These factors include contributions from:

— human factors (5.2);

— accommodation and environmental conditions (5.3);

— test and calibration methods and method validation (5.4);

— equipment (5.5);

— measurement traceability (5.6);

— sampling (5.7);

— the handling of test and calibration items (5.8).

5.1.2 The extent to which the factors contribute to the total uncertainty of measurement differs considerably between (types of) tests and between (types of) calibrations. The laboratory shall take account of these factors in developing test and calibration methods and procedures, in the training and qualification of personnel, and in the selection and calibration of the equipment it uses.

5.2 Personnel

5.2.1 The laboratory management shall ensure the competence of all who operate specific equipment, perform tests and/or calibrations, evaluate results, and sign test reports and calibration certificates. When using staff who are undergoing training, appropriate supervision shall be provided. Personnel performing specific tasks shall be qualified on the basis of appropriate education, training, experience and/or demonstrated skills, as required.

NOTE 1 In some technical areas (e.g. non-destructive testing) it may be required that the personnel performing certain tasks hold personnel certification. The laboratory is responsible for fulfilling specified personnel certification requirements. The requirements for personnel certification might be regulatory, included in the standards for the specific technical field, or required by the client.

NOTE 2 The personnel responsible for the opinions and interpretation included in test reports should, in addition to the appropriate qualifications, training, experience and satisfactory knowledge of the testing carried out, also have:

— relevant knowledge of the technology used for the manufacturing of the items, materials, products, etc. tested, or the way they are used or intended to be used, and of the defects or degradations which may occur during or in service;

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— knowledge of the general requirements expressed in the legislation and standards; and

— an understanding of the significance of deviations found with regard to the normal use of the items, materials, products, etc. concerned.

5.2.2 The management of the laboratory shall formulate the goals with respect to the education, training and skills of the laboratory personnel. The laboratory shall have a policy and procedures for identifying training needs and providing training of personnel. The training programme shall be relevant to the present and anticipated tasks of the laboratory.

5.2.3 The laboratory shall use personnel who are employed by, or under contract to, the laboratory. Where contracted and additional technical and key support personnel are used, the laboratory shall ensure that such personnel are supervised and competent and that they work in accordance with the laboratory's quality system.

5.2.4 The laboratory shall maintain current job descriptions for managerial, technical and key support personnel involved in tests and/or calibrations.

NOTE Job descriptions can be defined in many ways. As a minimum, the following should be defined:

— the responsibilities with respect to performing tests and/or calibrations;

— the responsibilities with respect to the planning of tests and/or calibrations and evaluation of results;

— the responsibilities for reporting opinions and interpretations;

— the responsibilities with respect to method modification and development and validation of new methods;

— expertise and experience required;

— qualifications and training programmes;

— managerial duties.

5.2.5 The management shall authorize specific personnel to perform particular types of sampling, test and/or calibration, to issue test reports and calibration certificates, to give opinions and interpretations and to operate particular types of equipment. The laboratory shall maintain records of the relevant authorization(s), competence, educational and professional qualifications, training, skills and experience of all technical personnel, including contracted personnel. This information shall be readily available and shall include the date on which authorization and/or competence is confirmed.

5.3 Accommodation and environmental conditions

5.3.1 Laboratory facilities for testing and/or calibration, including but not limited to energy sources, lighting and environmental conditions, shall be such as to facilitate correct performance of the tests and/or calibrations.

The laboratory shall ensure that the environmental conditions do not invalidate the results or adversely affect the required quality of any measurement. Particular care shall be taken when sampling and tests and/or calibrations are undertaken at sites other than a permanent laboratory facility. The technical requirements for accommodation and environmental conditions that can affect the results of tests and calibrations shall be documented.

5.3.2 The laboratory shall monitor, control and record environmental conditions as required by the relevant specifications, methods and procedures or where they influence the quality of the results. Due attention shall be paid, for example, to biological sterility, dust, electromagnetic disturbances, radiation, humidity, electrical supply, temperature, and sound and vibration levels, as appropriate to the technical activities concerned. Tests and calibrations shall be stopped when the environmental conditions jeopardize the results of the tests and/or calibrations.

5.3.3 There shall be effective separation between neighbouring areas in which there are incompatible activities. Measures shall be taken to prevent cross-contamination.

5.3.4 Access to and use of areas affecting the quality of the tests and/or calibrations shall be controlled. The laboratory shall determine the extent of control based on its particular circumstances.

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5.3.5 Measures shall be taken to ensure good housekeeping in the laboratory. Special procedures shall be prepared where necessary.

5.4 Test and calibration methods and method validation

5.4.1 General

The laboratory shall use appropriate methods and procedures for all tests and/or calibrations within its scope. These include sampling, handling, transport, storage and preparation of items to be tested and/or calibrated, and, where appropriate, an estimation of the measurement uncertainty as well as statistical techniques for analysis of test and/or calibration data.

The laboratory shall have instructions on the use and operation of all relevant equipment, and on the handling and preparation of items for testing and/or calibration, or both, where the absence of such instructions could jeopardize the results of tests and/or calibrations. All instructions, standards, manuals and reference data relevant to the work of the laboratory shall be kept up to date and shall be made readily available to personnel (see 4.3). Deviation from test and calibration methods shall occur only if the deviation has been documented, technically justified, authorized, and accepted by the client.

NOTE International, regional or national standards or other recognized specifications that contain sufficient and concise information on how to perform the tests and/or calibrations do not need to be supplemented or rewritten as internal procedures if these standards are written in a way that they can be used as published by the operating staff in a laboratory. It may be necessary to provide additional documentation for optional steps in the method or additional details.

5.4.2 Selection of methods

The laboratory shall use test and/or calibration methods, including methods for sampling, which meet the needs of the client and which are appropriate for the tests and/or calibrations it undertakes. Methods published in international, regional or national standards shall preferably be used. The laboratory shall ensure that it uses the latest valid edition of a standard unless it is not appropriate or possible to do so. When necessary, the standard shall be supplemented with additional details to ensure consistent application.

When the client does not specify the method to be used, the laboratory shall select appropriate methods that have been published either in international, regional or national standards, or by reputable technical organizations, or in relevant scientific texts or journals, or as specified by the manufacturer of the equipment. Laboratory-developed methods or methods adopted by the laboratory may also be used if they are appropriate for the intended use and if they are validated. The client shall be informed as to the method chosen. The laboratory shall confirm that it can properly operate standard methods before introducing the tests or calibrations. If the standard method changes, the confirmation shall be repeated.

The laboratory shall inform the client when the method proposed by the client is considered to be inappropriate or out of date.

5.4.3 Laboratory-developed methods

The introduction of test and calibration methods developed by the laboratory for its own use shall be a planned activity and shall be assigned to qualified personnel equipped with adequate resources.

Plans shall be updated as development proceeds and effective communication amongst all personnel involved shall be ensured.

5.4.4 Non-standard methods

When it is necessary to use methods not covered by standard methods, these shall be subject to agreement with the client and shall include a clear specification of the client's requirements and the purpose of the test and/or calibration. The method developed shall have been validated appropriately before use.

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NOTE For new test and/or calibration methods, procedures should be developed prior to the tests and/or calibrations being performed and should contain at least the following information:

a) appropriate identification;

b) scope;

c) description of the type of item to be tested or calibrated;

d) parameters or quantities and ranges to be determined;

e) apparatus and equipment, including technical performance requirements;

f) reference standards and reference materials required;

g) environmental conditions required and any stabilization period needed;

h) description of the procedure, including

— affixing of identification marks, handling, transporting, storing and preparation of items,

— checks to be made before the work is started,

— checks that the equipment is working properly and, where required, calibration and adjustment of the equipment before each use,

— the method of recording the observations and results,

— any safety measures to be observed;

i) criteria and/or requirements for approval/rejection;

j) data to be recorded and method of analysis and presentation;

k) the uncertainty or the procedure for estimating uncertainty.

5.4.5 Validation of methods

5.4.5.1 Validation is the confirmation by examination and the provision of objective evidence that the particular requirements for a specific intended use are fulfilled.

5.4.5.2 The laboratory shall validate non-standard methods, laboratory-designed/developed methods, standard methods used outside their intended scope, and amplifications and modifications of standard methods to confirm that the methods are fit for the intended use. The validation shall be as extensive as is necessary to meet the needs of the given application or field of application. The laboratory shall record the results obtained, the procedure used for the validation, and a statement as to whether the method is fit for the intended use.

NOTE 1 Validation may include procedures for sampling, handling and transportation.

NOTE 2 The techniques used for the determination of the performance of a method should be one of, or a combination of, the following:

— calibration using reference standards or reference materials;

— comparison of results achieved with other methods;

— interlaboratory comparisons;

— systematic assessment of the factors influencing the result;

— assessment of the uncertainty of the results based on scientific understanding of the theoretical principles of the method and practical experience.

NOTE 3 When some changes are made in the validated non-standard methods, the influence of such changes should be documented and, if appropriate, a new validation should be carried out.

5.4.5.3 The range and accuracy of the values obtainable from validated methods (e.g. the uncertainty of the results, detection limit, selectivity of the method, linearity, limit of repeatability and/or reproducibility, robustness against external influences and/or cross-sensitivity against interference from the matrix of the sample/test object), as assessed for the intended use, shall be relevant to the clients' needs.

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NOTE 1 Validation includes specification of the requirements, determination of the characteristics of the methods, a check that the requirements can be fulfilled by using the method, and a statement on the validity.

NOTE 2 As method-development proceeds, regular review should be carried out to verify that the needs of the client are still being fulfilled. Any change in requirements requiring modifications to the development plan should be approved and authorized.

NOTE 3 Validation is always a balance between costs, risks and technical possibilities. There are many cases in which the range and uncertainty of the values (e.g. accuracy, detection limit, selectivity, linearity, repeatability, reproducibility, robustness and cross-sensitivity) can only be given in a simplified way due to lack of information.

5.4.6 Estimation of uncertainty of measurement

5.4.6.1 A calibration laboratory, or a testing laboratory performing its own calibrations, shall have and shall apply a procedure to estimate the uncertainty of measurement for all calibrations and types of calibrations.

5.4.6.2 Testing laboratories shall have and shall apply procedures for estimating uncertainty of measurement. In certain cases the nature of the test method may preclude rigorous, metrologically and statistically valid, calculation of uncertainty of measurement. In these cases the laboratory shall at least attempt to identify all the components of uncertainty and make a reasonable estimation, and shall ensure that the form of reporting of the result does not give a wrong impression of the uncertainty. Reasonable estimation shall be based on knowledge of the performance of the method and on the measurement scope and shall make use of, for example, previous experience and validation data.

NOTE 1 The degree of rigor needed in an estimation of uncertainty of measurement depends on factors such as:

— the requirements of the test method;

— the requirements of the client;

— the existence of narrow limits on which decisions on conformance to a specification are based.

NOTE 2 In those cases where a well-recognized test method specifies limits to the values of the major sources of uncertainty of measurement and specifies the form of presentation of calculated results, the laboratory is considered to have satisfied this clause by following the test method and reporting instructions (see 5.10).

5.4.6.3 When estimating the uncertainty of measurement, all uncertainty components which are of importance in the given situation shall be taken into account using appropriate methods of analysis.

NOTE 1 Sources contributing to the uncertainty include, but are not necessarily limited to, the reference standards and reference materials used, methods and equipment used, environmental conditions, properties and condition of the item being tested or calibrated, and the operator.

NOTE 2 The predicted long-term behaviour of the tested and/or calibrated item is not normally taken into account when estimating the measurement uncertainty.

NOTE 3 For further information, see ISO 5725 and the Guide to the Expression of Uncertainty in Measurement (see bibliography).

5.4.7 Control of data

5.4.7.1 Calculations and data transfers shall be subject to appropriate checks in a systematic manner.

5.4.7.2 When computers or automated equipment are used for the acquisition, processing, recording, reporting, storage or retrieval of test or calibration data, the laboratory shall ensure that:

a) computer software developed by the user is documented in sufficient detail and is suitably validated as being adequate for use;

b) procedures are established and implemented for protecting the data; such procedures shall include, but not be limited to, integrity and confidentiality of data entry or collection, data storage, data transmission and data processing;

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c) computers and automated equipment are maintained to ensure proper functioning and are provided with the environmental and operating conditions necessary to maintain the integrity of test and calibration data.

NOTE Commercial off-the-shelf software (e.g. wordprocessing, database and statistical programmes) in general use within their designed application range may be considered to be sufficiently validated. However, laboratory software configuration/modifications should be validated as in 5.4.7.2a).

5.5 Equipment

5.5.1 The laboratory shall be furnished with all items of sampling, measurement and test equipment required for the correct performance of the tests and/or calibrations (including sampling, preparation of test and/or calibration items, processing and analysis of test and/or calibration data). In those cases where the laboratory needs to use equipment outside its permanent control, it shall ensure that the requirements of this International Standard are met.

5.5.2 Equipment and its software used for testing, calibration and sampling shall be capable of achieving the accuracy required and shall comply with specifications relevant to the tests and/or calibrations concerned. Calibration programmes shall be established for key quantities or values of the instruments where these properties have a significant effect on the results. Before being placed into service, equipment (including that used for sampling) shall be calibrated or checked to establish that it meets the laboratory's specification requirements and complies with the relevant standard specifications. It shall be checked and/or calibrated before use (see 5.6).

5.5.3 Equipment shall be operated by authorized personnel. Up-to-date instructions on the use and maintenance of equipment (including any relevant manuals provided by the manufacturer of the equipment) shall be readily available for use by the appropriate laboratory personnel.

5.5.4 Each item of equipment and its software used for testing and calibration and significant to the result shall, when practicable, be uniquely identified.

5.5.5 Records shall be maintained of each item of equipment and its software significant to the tests and/or calibrations performed. The records shall include at least the following:

a) the identity of the item of equipment and its software;

b) the manufacturer's name, type identification, and serial number or other unique identification;

c) checks that equipment complies with the specification (see 5.5.2);

d) the current location, where appropriate;

e) the manufacturer's instructions, if available, or reference to their location;

f) dates, results and copies of reports and certificates of all calibrations, adjustments, acceptance criteria, and the due date of next calibration;

g) the maintenance plan, where appropriate, and maintenance carried out to date;

h) any damage, malfunction, modification or repair to the equipment.

5.5.6 The laboratory shall have procedures for safe handling, transport, storage, use and planned maintenance of measuring equipment to ensure proper functioning and in order to prevent contamination or deterioration.

NOTE Additional procedures may be necessary when measuring equipment is used outside the permanent laboratory for tests, calibrations or sampling.

5.5.7 Equipment that has been subjected to overloading or mishandling, gives suspect results, or has been shown to be defective or outside specified limits, shall be taken out of service. It shall be isolated to prevent its use or clearly labelled or marked as being out of service until it has been repaired and shown by calibration or test to

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perform correctly. The laboratory shall examine the effect of the defect or departure from specified limits on previous tests and/or calibrations and shall institute the "Control of nonconforming work" procedure (see 4.9).

5.5.8 Whenever practicable, all equipment under the control of the laboratory and requiring calibration shall be labelled, coded or otherwise identified to indicate the status of calibration, including the date when last calibrated and the date or expiration criteria when recalibration is due.

5.5.9 When, for whatever reason, equipment goes outside the direct control of the laboratory, the laboratory shall ensure that the function and calibration status of the equipment are checked and shown to be satisfactory before the equipment is returned to service.

5.5.10 When intermediate checks are needed to maintain confidence in the calibration status of the equipment, these checks shall be carried out according to a defined procedure.

5.5.11 Where calibrations give rise to a set of correction factors, the laboratory shall have procedures to ensure that copies (e.g. in computer software) are correctly updated.

5.5.12 Test and calibration equipment, including both hardware and software, shall be safeguarded from adjustments which would invalidate the test and/or calibration results.

5.6 Measurement traceability

5.6.1 General

All equipment used for tests and/or calibrations, including equipment for subsidiary measurements (e.g. for environmental conditions) having a significant effect on the accuracy or validity of the result of the test, calibration or sampling shall be calibrated before being put into service. The laboratory shall have an established programme and procedure for the calibration of its equipment.

NOTE Such a programme should include a system for selecting, using, calibrating, checking, controlling and maintaining measurement standards, reference materials used as measurement standards, and measuring and test equipment used to perform tests and calibrations.

5.6.2 Specific requirements

5.6.2.1 Calibration

5.6.2.1.1 For calibration laboratories, the programme for calibration of equipment shall be designed and operated so as to ensure that calibrations and measurements made by the laboratory are traceable to the International System of Units (SI) *(Système international d'unités)*.

A calibration laboratory establishes traceability of its own measurement standards and measuring instruments to the SI by means of an unbroken chain of calibrations or comparisons linking them to relevant primary standards of the SI units of measurement. The link to SI units may be achieved by reference to national measurement standards. National measurement standards may be primary standards, which are primary realizations of the SI units or agreed representations of SI units based on fundamental physical constants, or they may be secondary standards which are standards calibrated by another national metrology institute. When using external calibration services, traceability of measurement shall be assured by the use of calibration services from laboratories that can demonstrate competence, measurement capability and traceability. The calibration certificates issued by these laboratories shall contain the measurement results, including the measurement uncertainty and/or a statement of compliance with an identified metrological specification (see also 5.10.4.2).

NOTE 1 Calibration laboratories fulfilling the requirements of this International Standard are considered to be competent. A calibration certificate bearing an accreditation body logo from a calibration laboratory accredited to this International Standard, for the calibration concerned, is sufficient evidence of traceability of the calibration data reported.

NOTE 2 Traceability to SI units of measurement may be achieved by reference to an appropriate primary standard (see VIM:1993, 6.4) or by reference to a natural constant, the value of which in terms of the relevant SI unit is known and

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recommended by the General Conference of Weights and Measures (CGPM) and the International Committee for Weights and Measures (CIPM).

NOTE 3 Calibration laboratories that maintain their own primary standard or representation of SI units based on fundamental physical constants can claim traceability to the SI system only after these standards have been compared, directly or indirectly, with other similar standards of a national metrology institute.

NOTE 4 The term "identified metrological specification" means that it must be clear from the calibration certificate which specification the measurements have been compared with, by including the specification or by giving an unambiguous reference to the specification.

NOTE 5 When the terms "international standard" or "national standard" are used in connection with traceability, it is assumed that these standards fulfil the properties of primary standards for the realization of SI units.

NOTE 6 Traceability to national measurement standards does not necessarily require the use of the national metrology institute of the country in which the laboratory is located.

NOTE 7 If a calibration laboratory wishes or needs to obtain traceability from a national metrology institute other than in its own country, this laboratory should select a national metrology institute that actively participates in the activities of BIPM either directly or through regional groups.

NOTE 8 The unbroken chain of calibrations or comparisons may be achieved in several steps carried out by different laboratories that can demonstrate traceability.

5.6.2.1.2 There are certain calibrations that currently cannot be strictly made in SI units. In these cases calibration shall provide confidence in measurements by establishing traceability to appropriate measurement standards such as:

— the use of certified reference materials provided by a competent supplier to give a reliable physical or chemical characterization of a material;

— the use of specified methods and/or consensus standards that are clearly described and agreed by all parties concerned.

Participation in a suitable programme of interlaboratory comparisons is required where possible.

5.6.2.2 Testing

5.6.2.2.1 For testing laboratories, the requirements given in 5.6.2.1 apply for measuring and test equipment with measuring functions used, unless it has been established that the associated contribution from the calibration contributes little to the total uncertainty of the test result. When this situation arises, the laboratory shall ensure that the equipment used can provide the uncertainty of measurement needed.

NOTE The extent to which the requirements in 5.6.2.1 should be followed depends on the relative contribution of the calibration uncertainty to the total uncertainty. If calibration is the dominant factor, the requirements should be strictly followed.

5.6.2.2.2 Where traceability of measurements to SI units is not possible and/or not relevant, the same requirements for traceability to, for example, certified reference materials, agreed methods and/or consensus standards, are required as for calibration laboratories (see 5.6.2.1.2).

5.6.3 Reference standards and reference materials

5.6.3.1 Reference standards

The laboratory shall have a programme and procedure for the calibration of its reference standards. Reference standards shall be calibrated by a body that can provide traceability as described in 5.6.2.1. Such reference standards of measurement held by the laboratory shall be used for calibration only and for no other purpose, unless it can be shown that their performance as reference standards would not be invalidated. Reference standards shall be calibrated before and after any adjustment.

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5.6.3.2 Reference materials

Reference materials shall, where possible, be traceable to SI units of measurement, or to certified reference materials. Internal reference materials shall be checked as far as is technically and economically practicable.

5.6.3.3 Intermediate checks

Checks needed to maintain confidence in the calibration status of reference, primary, transfer or working standards and reference materials shall be carried out according to defined procedures and schedules

5.6.3.4 Transport and storage

The laboratory shall have procedures for safe handling, transport, storage and use of reference standards and reference materials in order to prevent contamination or deterioration and in order to protect their integrity.

NOTE Additional procedures may be necessary when reference standards and reference materials are used outside the permanent laboratory for tests, calibrations or sampling.

5.7 Sampling

5.7.1 The laboratory shall have a sampling plan and procedures for sampling when it carries out sampling of substances, materials or products for subsequent testing or calibration. The sampling plan as well as the sampling procedure shall be available at the location where sampling is undertaken. Sampling plans shall, whenever reasonable, be based on appropriate statistical methods. The sampling process shall address the factors to be controlled to ensure the validity of the test and calibration results.

NOTE 1 Sampling is a defined procedure whereby a part of a substance, material or product is taken to provide for testing or calibration of a representative sample of the whole. Sampling may also be required by the appropriate specification for which the substance, material or product is to be tested or calibrated. In certain cases (e.g. forensic analysis), the sample may not be representative but is determined by availability.

NOTE 2 Sampling procedures should describe the selection, sampling plan, withdrawal and preparation of a sample or samples from a substance, material or product to yield the required information.

5.7.2 Where the client requires deviations, additions or exclusions from the documented sampling procedure, these shall be recorded in detail with the appropriate sampling data and shall be included in all documents containing test and/or calibration results, and shall be communicated to the appropriate personnel.

5.7.3 The laboratory shall have procedures for recording relevant data and operations relating to sampling that forms part of the testing or calibration that is undertaken. These records shall include the sampling procedure used, the identification of the sampler, environmental conditions (if relevant) and diagrams or other equivalent means to identify the sampling location as necessary and, if appropriate, the statistics the sampling procedures are based upon.

5.8 Handling of test and calibration items

5.8.1 The laboratory shall have procedures for the transportation, receipt, handling, protection, storage, retention and/or disposal of test and/or calibration items, including all provisions necessary to protect the integrity of the test or calibration item, and to protect the interests of the laboratory and the client.

5.8.2 The laboratory shall have a system for identifying test and/or calibration items. The identification shall be retained throughout the life of the item in the laboratory. The system shall be designed and operated so as to ensure that items cannot be confused physically or when referred to in records or other documents. The system shall, if appropriate, accommodate a sub-division of groups of items and the transfer of items within and from the laboratory.

5.8.3 Upon receipt of the test or calibration item, abnormalities or departures from normal or specified conditions, as described in the test or calibration method, shall be recorded. When there is doubt as to the suitability of an item for test or calibration, or when an item does not conform to the description provided, or the test or calibration

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required is not specified in sufficient detail, the laboratory shall consult the client for further instructions before proceeding and shall record the discussion.

5.8.4 The laboratory shall have procedures and appropriate facilities for avoiding deterioration, loss or damage to the test or calibration item during storage, handling and preparation. Handling instructions provided with the item shall be followed. When items have to be stored or conditioned under specified environmental conditions, these conditions shall be maintained, monitored and recorded. Where a test or calibration item or a portion of an item is to be held secure, the laboratory shall have arrangements for storage and security that protect the condition and integrity of the secured items or portions concerned.

NOTE 1 Where test items are to be returned into service after testing, special care is required to ensure that they are not damaged or injured during the handling, testing or storing/waiting processes.

NOTE 2 A sampling procedure and information on storage and transport of samples, including information on sampling factors influencing the test or calibration result, should be provided to those responsible for taking and transporting the samples.

NOTE 3 Reasons for keeping a test or calibration item secure can be for reasons of record, safety or value, or to enable complementary tests and/or calibrations to be performed later.

5.9 Assuring the quality of test and calibration results

The laboratory shall have quality control procedures for monitoring the validity of tests and calibrations undertaken. The resulting data shall be recorded in such a way that trends are detectable and, where practicable, statistical techniques shall be applied to the reviewing of the results. This monitoring shall be planned and reviewed and may include, but not be limited to, the following:

a) regular use of certified reference materials and/or internal quality control using secondary reference materials;

b) participation in interlaboratory comparison or proficiency-testing programmes;

c) replicate tests or calibrations using the same or different methods;

d) retesting or recalibration of retained items;

e) correlation of results for different characteristics of an item.

NOTE The selected methods should be appropriate for the type and volume of the work undertaken.

5.10 Reporting the results

5.10.1 General

The results of each test, calibration, or series of tests or calibrations carried out by the laboratory shall be reported accurately, clearly, unambiguously and objectively, and in accordance with any specific instructions in the test or calibration methods.

The results shall be reported, usually in a test report or a calibration certificate (see note 1), and shall include all the information requested by the client and necessary for the interpretation of the test or calibration results and all information required by the method used. This information is normally that required by 5.10.2, and 5.10.3 or 5.10.4.

In the case of tests or calibrations performed for internal clients, or in the case of a written agreement with the client, the results may be reported in a simplified way. Any information listed in 5.10.2 to 5.10.4 which is not reported to the client shall be readily available in the laboratory which carried out the tests and/or calibrations.

NOTE 1 Test reports and calibration certificates are sometimes called test certificates and calibration reports, respectively.

NOTE 2 The test reports or calibration certificates may be issued as hard copy or by electronic data transfer provided that the requirements of this International Standard are met.

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5.10.2 Test reports and calibration certificates

Each test report or calibration certificate shall include at least the following information, unless the laboratory has valid reasons for not doing so:

a) a title (e.g. "Test Report" or "Calibration Certificate");

b) the name and address of the laboratory, and the location where the tests and/or calibrations were carried out, if different from the address of the laboratory;

c) unique identification of the test report or calibration certificate (such as the serial number), and on each page an identification in order to ensure that the page is recognized as a part of the test report or calibration certificate, and a clear identification of the end of the test report or calibration certificate;

d) the name and address of the client;

e) identification of the method used;

f) a description of, the condition of, and unambiguous identification of the item(s) tested or calibrated;

g) the date of receipt of the test or calibration item(s) where this is critical to the validity and application of the results, and the date(s) of performance of the test or calibration;

h) reference to the sampling plan and procedures used by the laboratory or other bodies where these are relevant to the validity or application of the results;

i) the test or calibration results with, where appropriate, the units of measurement;

j) the name(s), function(s) and signature(s) or equivalent identification of person(s) authorizing the test report or calibration certificate;

k) where relevant, a statement to the effect that the results relate only to the items tested or calibrated.

NOTE 1 Hard copies of test reports and calibration certificates should also include the page number and total number of pages.

NOTE 2 It is recommended that laboratories include a statement specifying that the test report or calibration certificate shall not be reproduced except in full, without written approval of the laboratory.

5.10.3 Test reports

5.10.3.1 In addition to the requirements listed in 5.10.2, test reports shall, where necessary for the interpretation of the test results, include the following:

a) deviations from, additions to, or exclusions from the test method, and information on specific test conditions, such as environmental conditions;

b) where relevant, a statement of compliance/non-compliance with requirements and/or specifications;

c) where applicable, a statement on the estimated uncertainty of measurement; information on uncertainty is needed in test reports when it is relevant to the validity or application of the test results, when a client's instruction so requires, or when the uncertainty affects compliance to a specification limit;

d) where appropriate and needed, opinions and interpretations (see 5.10.5);

e) additional information which may be required by specific methods, clients or groups of clients.

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5.10.3.2 In addition to the requirements listed in 5.10.2 and 5.10.3.1, test reports containing the results of sampling shall include the following, where necessary for the interpretation of test results:

a) the date of sampling;

b) unambiguous identification of the substance, material or product sampled (including the name of the manufacturer, the model or type of designation and serial numbers as appropriate);

c) the location of sampling, including any diagrams, sketches or photographs;

d) a reference to the sampling plan and procedures used;

e) details of any environmental conditions during sampling that may affect the interpretation of the test results;

f) any standard or other specification for the sampling method or procedure, and deviations, additions to or exclusions from the specification concerned.

5.10.4 Calibration certificates

5.10.4.1 In addition to the requirements listed in 5.10.2, calibration certificates shall include the following, where necessary for the interpretation of calibration results:

a) the conditions (e.g. environmental) under which the calibrations were made that have an influence on the measurement results;

b) the uncertainty of measurement and/or a statement of compliance with an identified metrological specification or clauses thereof;

c) evidence that the measurements are traceable (see note 2 in 5.6.2.1.1).

5.10.4.2 The calibration certificate shall relate only to quantities and the results of functional tests. If a statement of compliance with a specification is made, this shall identify which clauses of the specification are met or not met.

When a statement of compliance with a specification is made omitting the measurement results and associated uncertainties, the laboratory shall record those results and maintain them for possible future reference.

When statements of compliance are made, the uncertainty of measurement shall be taken into account.

5.10.4.3 When an instrument for calibration has been adjusted or repaired, the calibration results before and after adjustment or repair, if available, shall be reported.

5.10.4.4 A calibration certificate (or calibration label) shall not contain any recommendation on the calibration interval except where this has been agreed with the client. This requirement may be superseded by legal regulations.

5.10.5 Opinions and interpretations

When opinions and interpretations are included, the laboratory shall document the basis upon which the opinions and interpretations have been made. Opinions and interpretations shall be clearly marked as such in a test report.

NOTE 1 Opinions and interpretations should not be confused with inspections and product certifications as intended in ISO/IEC 17020 and ISO/IEC Guide 65.

NOTE 2 Opinions and interpretations included in a test report may comprise, but not be limited to, the following:

— an opinion on the statement of compliance/noncompliance of the results with requirements;

— fulfilment of contractual requirements;

— recommendations on how to use the results;

— guidance to be used for improvements.

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NOTE 3 In many cases it might be appropriate to communicate the opinions and interpretations by direct dialogue with the client. Such dialogue should be written down.

5.10.6 Testing and calibration results obtained from subcontractors

When the test report contains results of tests performed by subcontractors, these results shall be clearly identified. The subcontractor shall report the results in writing or electronically.

When a calibration has been subcontracted, the laboratory performing the work shall issue the calibration certificate to the contracting laboratory.

5.10.7 Electronic transmission of results

In the case of transmission of test or calibration results by telephone, telex, facsimile or other electronic or electromagnetic means, the requirements of this International Standard shall be met (see also 5.4.7).

5.10.8 Format of reports and certificates

The format shall be designed to accommodate each type of test or calibration carried out and to minimize the possibility of misunderstanding or misuse.

NOTE 1 Attention should be given to the lay-out of the test report or calibration certificate, especially with regard to the presentation of the test or calibration data and ease of assimilation by the reader.

NOTE 2 The headings should be standardized as far as possible.

5.10.9 Amendments to test reports and calibration certificates

Material amendments to a test report or calibration certificate after issue shall be made only in the form of a further document, or data transfer, which includes the statement:

"Supplement to Test Report [or Calibration Certificate], serial number ... [or as otherwise identified]",

or an equivalent form of wording.

Such amendments shall meet all the requirements of this International Standard.

When it is necessary to issue a complete new test report or calibration certificate, this shall be uniquely identified and shall contain a reference to the original that it replaces.

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Annex A
(informative)

Nominal cross-references to ISO 9001:1994 and ISO 9002:1994

Table A.1 — Nominal cross-references to ISO 9001:1994 and ISO 9002:1994

ISO 9001:1994	ISO 9002:1994	ISO/IEC 17025
Clause 1	Clause 1	Clause 1
Clause 2	Clause 2	Clause 2
Clause 3	Clause 3	Clause 3
4.1.1	4.1.1	4.1.3, 4.2.2
4.1.2.1	4.1.2.1	4.1.5 a), f), h); 4.2.4; 4.9.1 a); 4.10.1 and 5.2.5
4.1.2.2	4.1.2.2	4.1.5 a), g), h) and 5.5.1
4.1.2.3	4.1.2.3	4.1.5 i)
4.1.3	4.1.3	4.14
4.2.1 and 4.2.2	4.2.1 and 4.2.2	4.2.1, 4.2.2, 4.2.3
4.2.3	4.2.3	4.2.1, 4.2.2 and 4.14
4.3	4.3	4.4
4.4	4.4 (n.a.)	1.5, 5.4.2, 5.4.3, 5.4.4, 5.4.5
4.5	4.5	4.3, 5.4.7, 5.5.11
4.6.1	4.6.1	4.6, 5.5, 5.6.1, 5.6.2.1, 5.6.2.2
4.6.2	4.6.2	4.5, 4.6
4.6.3	4.6.3	4.6
4.6.4	4.6.4	4.5, 4.6.4, 4.7, 5.5.2
4.7	4.7	5.8, 5.10.6
4.8	4.8	5.5.4, 5.8
4.9	4.9	4.12, 5.3, 5.4, 5.5, 5.8, 5.9
4.10.1	4.10.1	5.4
4.10.2	4.10.2	4.5, 4.6, 5.5.2, 5.8
4.10.3	4.10.3	4.9, 5.5.9, 5.8.3, 5.8.4, 5.9
4.10.4	4.10.4	5.4.7, 5.9, 5.10.1
4.10.5	4.10.5	4.12.2
4.11.1	4.11.1	5.4, 5.5, 5.6
4.11.2	4.11.2	5.3, 5.4.1, 5.4.5, 5.5, 5.6
4.12	4.12	5.5.12, 5.8, 5.9.2
4.13	4.13	4.9
4.14	4.14.1	4.10 and 4.11
4.15	4.15	5.9
4.16	4.16	4.12
4.17	4.17	4.10.5, 4.13 (4.12)
4.18	4.18	5.2, 5.5.3
4.19	4.19	4.7, 5.2.1, 5.10.5
4.20	4.20	5.9
n.a. = not applicable		

ISO/IEC 17025 covers several technical competence requirements that are not covered by ISO 9001:1994 and ISO 9002:1994.

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Annex B
(informative)

Guidelines for establishing applications for specific fields

B.1 The requirements specified in this International Standard are stated in general terms and, while they are applicable to all test and calibration laboratories, explanations might be needed. Such explanations on applications are herein referred to as applications. Applications should not include additional general requirements not included in this International Standard.

B.2 Applications can be thought of as an elaboration of the generally stated criteria (requirements) of this International Standard for specified fields of test and calibration, test technologies, products, materials or specific tests or calibrations. Accordingly, applications should be established by persons having appropriate technical knowledge and experience, and should address items that are essential or most important for the proper conduct of a test or calibration.

B.3 Depending on the application at hand, it may be necessary to establish applications for the technical requirements of this International Standard. Establishing applications may be accomplished by simply providing detail or adding extra information to the already generally stated requirements in each of the clauses (e.g. specific limitations to the temperature and humidity in the laboratory).

In some cases the applications will be quite limited, applying only to a given test or calibration method or to a group of calibration or test methods. In other cases the applications may be quite broad, applying to the testing or calibration of various products or items or to entire fields of testing or calibration.

B.4 If the applications apply to a group of test or calibration methods in an entire technical field, common wording should be used for all of the methods.

Alternatively, it may be necessary to develop a separate document of applications to supplement this International Standard for specific types or groups of tests or calibrations, products, materials or technical fields of tests or calibrations. Such a document should provide only the necessary supplementary information, while maintaining this International Standard as the governing document through reference. Applications which are too specific should be avoided in order to limit the proliferation of detailed documents.

B.5 The guidance in this annex should be used by accreditation bodies and other types of evaluation bodies when they develop applications for their own purposes (e.g. accreditation in specific areas).

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INTERNATIONAL STANDARD

ISO/IEC 17025

Second edition
2005-05-15

General requirements for the competence of testing and calibration laboratories

Exigences générales concernant la compétence des laboratoires d'étalonnages et d'essais

Reference number
ISO/IEC 17025:2005(E)

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Foreword

ISO (the International Organization for Standardization) and IEC (the International Electrotechnical Commission) form the specialized system for worldwide standardization. National bodies that are members of ISO or IEC participate in the development of International Standards through technical committees established by the respective organization to deal with particular fields of technical activity. ISO and IEC technical committees collaborate in fields of mutual interest. Other international organizations, governmental and non-governmental, in liaison with ISO and IEC, also take part in the work. In the field of conformity assessment, the ISO Committee on conformity assessment (CASCO) is responsible for the development of International Standards and Guides.

International Standards are drafted in accordance with the rules given in the ISO/IEC Directives, Part 2.

Draft International Standards are circulated to the national bodies for voting. Publication as an International Standard requires approval by at least 75 % of the national bodies casting a vote.

Attention is drawn to the possibility that some of the elements of this document may be the subject of patent rights. ISO shall not be held responsible for identifying any or all such patent rights.

ISO/IEC 17025 was prepared by the *ISO Committee on conformity assessment* (CASCO).

It was circulated for voting to the national bodies of both ISO and IEC, and was approved by both organizations.

This second edition cancels and replaces the first edition (ISO/IEC 17025:1999), which has been technically revised.

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Introduction

The first edition (1999) of this International Standard was produced as the result of extensive experience in the implementation of ISO/IEC Guide 25 and EN 45001, both of which it replaced. It contained all of the requirements that testing and calibration laboratories have to meet if they wish to demonstrate that they operate a management system, are technically competent, and are able to generate technically valid results.

The first edition referred to ISO 9001:1994 and ISO 9002:1994. These standards have been superseded by ISO 9001:2000, which made an alignment of ISO/IEC 17025 necessary. In this second edition, clauses have been amended or added only when considered necessary in the light of ISO 9001:2000.

Accreditation bodies that recognize the competence of testing and calibration laboratories should use this International Standard as the basis for their accreditation. Clause 4 specifies the requirements for sound management. Clause 5 specifies the requirements for technical competence for the type of tests and/or calibrations the laboratory undertakes.

Growth in the use of management systems generally has increased the need to ensure that laboratories which form part of larger organizations or offer other services can operate to a quality management system that is seen as compliant with ISO 9001 as well as with this International Standard. Care has been taken, therefore, to incorporate all those requirements of ISO 9001 that are relevant to the scope of testing and calibration services that are covered by the laboratory's management system.

Testing and calibration laboratories that comply with this International Standard will therefore also operate in accordance with ISO 9001.

Conformity of the quality management system within which the laboratory operates to the requirements of ISO 9001 does not of itself demonstrate the competence of the laboratory to produce technically valid data and results. Nor does demonstrated conformity to this International Standard imply conformity of the quality management system within which the laboratory operates to all the requirements of ISO 9001.

The acceptance of testing and calibration results between countries should be facilitated if laboratories comply with this International Standard and if they obtain accreditation from bodies which have entered into mutual recognition agreements with equivalent bodies in other countries using this International Standard.

The use of this International Standard will facilitate cooperation between laboratories and other bodies, and assist in the exchange of information and experience, and in the harmonization of standards and procedures.

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General requirements for the competence of testing and calibration laboratories

1 Scope

1.1 This International Standard specifies the general requirements for the competence to carry out tests and/or calibrations, including sampling. It covers testing and calibration performed using standard methods, non-standard methods, and laboratory-developed methods.

1.2 This International Standard is applicable to all organizations performing tests and/or calibrations. These include, for example, first-, second- and third-party laboratories, and laboratories where testing and/or calibration forms part of inspection and product certification.

This International Standard is applicable to all laboratories regardless of the number of personnel or the extent of the scope of testing and/or calibration activities. When a laboratory does not undertake one or more of the activities covered by this International Standard, such as sampling and the design/development of new methods, the requirements of those clauses do not apply.

1.3 The notes given provide clarification of the text, examples and guidance. They do not contain requirements and do not form an integral part of this International Standard.

1.4 This International Standard is for use by laboratories in developing their management system for quality, administrative and technical operations. Laboratory customers, regulatory authorities and accreditation bodies may also use it in confirming or recognizing the competence of laboratories. This International Standard is not intended to be used as the basis for certification of laboratories.

NOTE 1 The term 'management system' in this International Standard means the quality, administrative and technical systems that govern the operations of a laboratory.

NOTE 2 Certification of a management system is sometimes also called registration.

1.5 Compliance with regulatory and safety requirements on the operation of laboratories is not covered by this International Standard.

1.6 If testing and calibration laboratories comply with the requirements of this International Standard, they will operate a quality management system for their testing and calibration activities that also meets the principles of ISO 9001. Annex A provides nominal cross-references between this International Standard and ISO 9001. This International Standard covers technical competence requirements that are not covered by ISO 9001.

NOTE 1 It might be necessary to explain or interpret certain requirements in this International Standard to ensure that the requirements are applied in a consistent manner. Guidance for establishing applications for specific fields, especially for accreditation bodies (see ISO/IEC 17011) is given in Annex B.

NOTE 2 If a laboratory wishes accreditation for part or all of its testing and calibration activities, it should select an accreditation body that operates in accordance with ISO/IEC 17011.

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2 Normative references

The following referenced documents are indispensable for the application of this document. For dated references, only the edition cited applies. For undated references, the latest edition of the referenced document (including any amendments) applies.

ISO/IEC 17000, *Conformity assessment — Vocabulary and general principles*

VIM, *International vocabulary of basic and general terms in metrology*, issued by BIPM, IEC, IFCC, ISO, IUPAC, IUPAP and OIML

NOTE Further related standards, guides, etc. on subjects included in this International Standard are given in the Bibliography.

3 Terms and definitions

For the purposes of this document, the relevant terms and definitions given in ISO/IEC 17000 and VIM apply.

NOTE General definitions related to quality are given in ISO 9000, whereas ISO/IEC 17000 gives definitions specifically related to certification and laboratory accreditation. Where different definitions are given in ISO 9000, the definitions in ISO/IEC 17000 and VIM are preferred.

4 Management requirements

4.1 Organization

4.1.1 The laboratory or the organization of which it is part shall be an entity that can be held legally responsible.

4.1.2 It is the responsibility of the laboratory to carry out its testing and calibration activities in such a way as to meet the requirements of this International Standard and to satisfy the needs of the customer, the regulatory authorities or organizations providing recognition.

4.1.3 The management system shall cover work carried out in the laboratory's permanent facilities, at sites away from its permanent facilities, or in associated temporary or mobile facilities.

4.1.4 If the laboratory is part of an organization performing activities other than testing and/or calibration, the responsibilities of key personnel in the organization that have an involvement or influence on the testing and/or calibration activities of the laboratory shall be defined in order to identify potential conflicts of interest.

NOTE 1 Where a laboratory is part of a larger organization, the organizational arrangements should be such that departments having conflicting interests, such as production, commercial marketing or financing do not adversely influence the laboratory's compliance with the requirements of this International Standard.

NOTE 2 If the laboratory wishes to be recognized as a third-party laboratory, it should be able to demonstrate that it is impartial and that it and its personnel are free from any undue commercial, financial and other pressures which might influence their technical judgement. The third-party testing or calibration laboratory should not engage in any activities that may endanger the trust in its independence of judgement and integrity in relation to its testing or calibration activities.

4.1.5 The laboratory shall

a) have managerial and technical personnel who, irrespective of other responsibilities, have the authority and resources needed to carry out their duties, including the implementation, maintenance and improvement of the management system, and to identify the occurrence of departures from the management system or from the procedures for performing tests and/or calibrations, and to initiate actions to prevent or minimize such departures (see also 5.2);

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b) have arrangements to ensure that its management and personnel are free from any undue internal and external commercial, financial and other pressures and influences that may adversely affect the quality of their work;

c) have policies and procedures to ensure the protection of its customers' confidential information and proprietary rights, including procedures for protecting the electronic storage and transmission of results;

d) have policies and procedures to avoid involvement in any activities that would diminish confidence in its competence, impartiality, judgement or operational integrity;

e) define the organization and management structure of the laboratory, its place in any parent organization, and the relationships between quality management, technical operations and support services;

f) specify the responsibility, authority and interrelationships of all personnel who manage, perform or verify work affecting the quality of the tests and/or calibrations;

g) provide adequate supervision of testing and calibration staff, including trainees, by persons familiar with methods and procedures, purpose of each test and/or calibration, and with the assessment of the test or calibration results;

h) have technical management which has overall responsibility for the technical operations and the provision of the resources needed to ensure the required quality of laboratory operations;

i) appoint a member of staff as quality manager (however named) who, irrespective of other duties and responsibilities, shall have defined responsibility and authority for ensuring that the management system related to quality is implemented and followed at all times; the quality manager shall have direct access to the highest level of management at which decisions are made on laboratory policy or resources;

j) appoint deputies for key managerial personnel (see Note);

k) ensure that its personnel are aware of the relevance and importance of their activities and how they contribute to the achievement of the objectives of the management system.

NOTE Individuals may have more than one function and it may be impractical to appoint deputies for every function.

4.1.6 Top management shall ensure that appropriate communication processes are established within the laboratory and that communication takes place regarding the effectiveness of the management system.

4.2 Management system

4.2.1 The laboratory shall establish, implement and maintain a management system appropriate to the scope of its activities. The laboratory shall document its policies, systems, programmes, procedures and instructions to the extent necessary to assure the quality of the test and/or calibration results. The system's documentation shall be communicated to, understood by, available to, and implemented by the appropriate personnel.

4.2.2 The laboratory's management system policies related to quality, including a quality policy statement, shall be defined in a quality manual (however named). The overall objectives shall be established, and shall be reviewed during management review. The quality policy statement shall be issued under the authority of top management. It shall include at least the following:

a) the laboratory management's commitment to good professional practice and to the quality of its testing and calibration in servicing its customers;

b) the management's statement of the laboratory's standard of service;

c) the purpose of the management system related to quality;

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d) a requirement that all personnel concerned with testing and calibration activities within the laboratory familiarize themselves with the quality documentation and implement the policies and procedures in their work; and

e) the laboratory management's commitment to comply with this International Standard and to continually improve the effectiveness of the management system.

NOTE The quality policy statement should be concise and may include the requirement that tests and/or calibrations shall always be carried out in accordance with stated methods and customers' requirements. When the test and/or calibration laboratory is part of a larger organization, some quality policy elements may be in other documents.

4.2.3 Top management shall provide evidence of commitment to the development and implementation of the management system and to continually improving its effectiveness.

4.2.4 Top management shall communicate to the organization the importance of meeting customer requirements as well as statutory and regulatory requirements.

4.2.5 The quality manual shall include or make reference to the supporting procedures including technical procedures. It shall outline the structure of the documentation used in the management system.

4.2.6 The roles and responsibilities of technical management and the quality manager, including their responsibility for ensuring compliance with this International Standard, shall be defined in the quality manual.

4.2.7 Top management shall ensure that the integrity of the management system is maintained when changes to the management system are planned and implemented.

4.3 Document control

4.3.1 General

The laboratory shall establish and maintain procedures to control all documents that form part of its management system (internally generated or from external sources), such as regulations, standards, other normative documents, test and/or calibration methods, as well as drawings, software, specifications, instructions and manuals.

NOTE 1 In this context "document" could be policy statements, procedures, specifications, calibration tables, charts, text books, posters, notices, memoranda, software, drawings, plans, etc. These may be on various media, whether hard copy or electronic, and they may be digital, analog, photographic or written.

NOTE 2 The control of data related to testing and calibration is covered in 5.4.7. The control of records is covered in 4.13.

4.3.2 Document approval and issue

4.3.2.1 All documents issued to personnel in the laboratory as part of the management system shall be reviewed and approved for use by authorized personnel prior to issue. A master list or an equivalent document control procedure identifying the current revision status and distribution of documents in the management system shall be established and shall be readily available to preclude the use of invalid and/or obsolete documents.

4.3.2.2 The procedure(s) adopted shall ensure that:

a) authorized editions of appropriate documents are available at all locations where operations essential to the effective functioning of the laboratory are performed;

b) documents are periodically reviewed and, where necessary, revised to ensure continuing suitability and compliance with applicable requirements;

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c) invalid or obsolete documents are promptly removed from all points of issue or use, or otherwise assured against unintended use;

d) obsolete documents retained for either legal or knowledge preservation purposes are suitably marked.

4.3.2.3 Management system documents generated by the laboratory shall be uniquely identified. Such identification shall include the date of issue and/or revision identification, page numbering, the total number of pages or a mark to signify the end of the document, and the issuing authority(ies).

4.3.3 Document changes

4.3.3.1 Changes to documents shall be reviewed and approved by the same function that performed the original review unless specifically designated otherwise. The designated personnel shall have access to pertinent background information upon which to base their review and approval.

4.3.3.2 Where practicable, the altered or new text shall be identified in the document or the appropriate attachments.

4.3.3.3 If the laboratory's document control system allows for the amendment of documents by hand pending the re-issue of the documents, the procedures and authorities for such amendments shall be defined. Amendments shall be clearly marked, initialled and dated. A revised document shall be formally re-issued as soon as practicable.

4.3.3.4 Procedures shall be established to describe how changes in documents maintained in computerized systems are made and controlled.

4.4 Review of requests, tenders and contracts

4.4.1 The laboratory shall establish and maintain procedures for the review of requests, tenders and contracts. The policies and procedures for these reviews leading to a contract for testing and/or calibration shall ensure that:

a) the requirements, including the methods to be used, are adequately defined, documented and understood (see 5.4.2);

b) the laboratory has the capability and resources to meet the requirements;

c) the appropriate test and/or calibration method is selected and is capable of meeting the customers' requirements (see 5.4.2).

Any differences between the request or tender and the contract shall be resolved before any work commences. Each contract shall be acceptable both to the laboratory and the customer.

NOTE 1 The request, tender and contract review should be conducted in a practical and efficient manner, and the effect of financial, legal and time schedule aspects should be taken into account. For internal customers, reviews of requests, tenders and contracts can be performed in a simplified way.

NOTE 2 The review of capability should establish that the laboratory possesses the necessary physical, personnel and information resources, and that the laboratory's personnel have the skills and expertise necessary for the performance of the tests and/or calibrations in question. The review may also encompass results of earlier participation in interlaboratory comparisons or proficiency testing and/or the running of trial test or calibration programmes using samples or items of known value in order to determine uncertainties of measurement, limits of detection, confidence limits, etc.

NOTE 3 A contract may be any written or oral agreement to provide a customer with testing and/or calibration services.

4.4.2 Records of reviews, including any significant changes, shall be maintained. Records shall also be maintained of pertinent discussions with a customer relating to the customer's requirements or the results of the work during the period of execution of the contract.

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NOTE For review of routine and other simple tasks, the date and the identification (e.g. the initials) of the person in the laboratory responsible for carrying out the contracted work are considered adequate. For repetitive routine tasks, the review need be made only at the initial enquiry stage or on granting of the contract for on-going routine work performed under a general agreement with the customer, provided that the customer's requirements remain unchanged. For new, complex or advanced testing and/or calibration tasks, a more comprehensive record should be maintained.

4.4.3 The review shall also cover any work that is subcontracted by the laboratory.

4.4.4 The customer shall be informed of any deviation from the contract.

4.4.5 If a contract needs to be amended after work has commenced, the same contract review process shall be repeated and any amendments shall be communicated to all affected personnel.

4.5 Subcontracting of tests and calibrations

4.5.1 When a laboratory subcontracts work, whether because of unforeseen reasons (e.g. workload, need for further expertise or temporary incapacity) or on a continuing basis (e.g. through permanent subcontracting, agency or franchising arrangements), this work shall be placed with a competent subcontractor. A competent subcontractor is one that, for example, complies with this International Standard for the work in question.

4.5.2 The laboratory shall advise the customer of the arrangement in writing and, when appropriate, gain the approval of the customer, preferably in writing.

4.5.3 The laboratory is responsible to the customer for the subcontractor's work, except in the case where the customer or a regulatory authority specifies which subcontractor is to be used.

4.5.4 The laboratory shall maintain a register of all subcontractors that it uses for tests and/or calibrations and a record of the evidence of compliance with this International Standard for the work in question.

4.6 Purchasing services and supplies

4.6.1 The laboratory shall have a policy and procedure(s) for the selection and purchasing of services and supplies it uses that affect the quality of the tests and/or calibrations. Procedures shall exist for the purchase, reception and storage of reagents and laboratory consumable materials relevant for the tests and calibrations.

4.6.2 The laboratory shall ensure that purchased supplies and reagents and consumable materials that affect the quality of tests and/or calibrations are not used until they have been inspected or otherwise verified as complying with standard specifications or requirements defined in the methods for the tests and/or calibrations concerned. These services and supplies used shall comply with specified requirements. Records of actions taken to check compliance shall be maintained.

4.6.3 Purchasing documents for items affecting the quality of laboratory output shall contain data describing the services and supplies ordered. These purchasing documents shall be reviewed and approved for technical content prior to release.

NOTE The description may include type, class, grade, precise identification, specifications, drawings, inspection instructions, other technical data including approval of test results, the quality required and the management system standard under which they were made.

4.6.4 The laboratory shall evaluate suppliers of critical consumables, supplies and services which affect the quality of testing and calibration, and shall maintain records of these evaluations and list those approved.

4.7 Service to the customer

4.7.1 The laboratory shall be willing to cooperate with customers or their representatives in clarifying the customer's request and in monitoring the laboratory's performance in relation to the work performed, provided that the laboratory ensures confidentiality to other customers.

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NOTE 1 Such cooperation may include:

a) providing the customer or the customer's representative reasonable access to relevant areas of the laboratory for the witnessing of tests and/or calibrations performed for the customer;

b) preparation, packaging, and dispatch of test and/or calibration items needed by the customer for verification purposes.

NOTE 2 Customers value the maintenance of good communication, advice and guidance in technical matters, and opinions and interpretations based on results. Communication with the customer, especially in large assignments, should be maintained throughout the work. The laboratory should inform the customer of any delays or major deviations in the performance of the tests and/or calibrations.

4.7.2 The laboratory shall seek feedback, both positive and negative, from its customers. The feedback shall be used and analysed to improve the management system, testing and calibration activities and customer service.

NOTE Examples of the types of feedback include customer satisfaction surveys and review of test or calibration reports with customers.

4.8 Complaints

The laboratory shall have a policy and procedure for the resolution of complaints received from customers or other parties. Records shall be maintained of all complaints and of the investigations and corrective actions taken by the laboratory (see also 4.11).

4.9 Control of nonconforming testing and/or calibration work

4.9.1 The laboratory shall have a policy and procedures that shall be implemented when any aspect of its testing and/or calibration work, or the results of this work, do not conform to its own procedures or the agreed requirements of the customer. The policy and procedures shall ensure that:

a) the responsibilities and authorities for the management of nonconforming work are designated and actions (including halting of work and withholding of test reports and calibration certificates, as necessary) are defined and taken when nonconforming work is identified;

b) an evaluation of the significance of the nonconforming work is made;

c) correction is taken immediately, together with any decision about the acceptability of the nonconforming work;

d) where necessary, the customer is notified and work is recalled;

e) the responsibility for authorizing the resumption of work is defined.

NOTE Identification of nonconforming work or problems with the management system or with testing and/or calibration activities can occur at various places within the management system and technical operations. Examples are customer complaints, quality control, instrument calibration, checking of consumable materials, staff observations or supervision, test report and calibration certificate checking, management reviews and internal or external audits.

4.9.2 Where the evaluation indicates that the nonconforming work could recur or that there is doubt about the compliance of the laboratory's operations with its own policies and procedures, the corrective action procedures given in 4.11 shall be promptly followed.

4.10 Improvement

The laboratory shall continually improve the effectiveness of its management system through the use of the quality policy, quality objectives, audit results, analysis of data, corrective and preventive actions and management review.

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4.11 Corrective action

4.11.1 General

The laboratory shall establish a policy and a procedure and shall designate appropriate authorities for implementing corrective action when nonconforming work or departures from the policies and procedures in the management system or technical operations have been identified.

NOTE A problem with the management system or with the technical operations of the laboratory may be identified through a variety of activities, such as control of nonconforming work, internal or external audits, management reviews, feedback from customers and from staff observations.

4.11.2 Cause analysis

The procedure for corrective action shall start with an investigation to determine the root cause(s) of the problem.

NOTE Cause analysis is the key and sometimes the most difficult part in the corrective action procedure. Often the root cause is not obvious and thus a careful analysis of all potential causes of the problem is required. Potential causes could include customer requirements, the samples, sample specifications, methods and procedures, staff skills and training, consumables, or equipment and its calibration.

4.11.3 Selection and implementation of corrective actions

Where corrective action is needed, the laboratory shall identify potential corrective actions. It shall select and implement the action(s) most likely to eliminate the problem and to prevent recurrence.

Corrective actions shall be to a degree appropriate to the magnitude and the risk of the problem.

The laboratory shall document and implement any required changes resulting from corrective action investigations.

4.11.4 Monitoring of corrective actions

The laboratory shall monitor the results to ensure that the corrective actions taken have been effective.

4.11.5 Additional audits

Where the identification of nonconformities or departures casts doubts on the laboratory's compliance with its own policies and procedures, or on its compliance with this International Standard, the laboratory shall ensure that the appropriate areas of activity are audited in accordance with 4.14 as soon as possible.

NOTE Such additional audits often follow the implementation of the corrective actions to confirm their effectiveness. An additional audit should be necessary only when a serious issue or risk to the business is identified.

4.12 Preventive action

4.12.1 Needed improvements and potential sources of nonconformities, either technical or concerning the management system, shall be identified. When improvement opportunities are identified or if preventive action is required, action plans shall be developed, implemented and monitored to reduce the likelihood of the occurrence of such nonconformities and to take advantage of the opportunities for improvement.

4.12.2 Procedures for preventive actions shall include the initiation of such actions and the application of controls to ensure that they are effective.

NOTE 1 Preventive action is a pro-active process to identify opportunities for improvement rather than a reaction to the identification of problems or complaints.

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NOTE 2 Apart from the review of the operational procedures, the preventive action might involve analysis of data, including trend and risk analyses and proficiency-testing results.

4.13 Control of records

4.13.1 General

4.13.1.1 The laboratory shall establish and maintain procedures for identification, collection, indexing, access, filing, storage, maintenance and disposal of quality and technical records. Quality records shall include reports from internal audits and management reviews as well as records of corrective and preventive actions.

4.13.1.2 All records shall be legible and shall be stored and retained in such a way that they are readily retrievable in facilities that provide a suitable environment to prevent damage or deterioration and to prevent loss. Retention times of records shall be established.

NOTE Records may be in any media, such as hard copy or electronic media.

4.13.1.3 All records shall be held secure and in confidence.

4.13.1.4 The laboratory shall have procedures to protect and back-up records stored electronically and to prevent unauthorized access to or amendment of these records.

4.13.2 Technical records

4.13.2.1 The laboratory shall retain records of original observations, derived data and sufficient information to establish an audit trail, calibration records, staff records and a copy of each test report or calibration certificate issued, for a defined period. The records for each test or calibration shall contain sufficient information to facilitate, if possible, identification of factors affecting the uncertainty and to enable the test or calibration to be repeated under conditions as close as possible to the original. The records shall include the identity of personnel responsible for the sampling, performance of each test and/or calibration and checking of results.

NOTE 1 In certain fields it may be impossible or impractical to retain records of all original observations.

NOTE 2 Technical records are accumulations of data (see 5.4.7) and information which result from carrying out tests and/or calibrations and which indicate whether specified quality or process parameters are achieved. They may include forms, contracts, work sheets, work books, check sheets, work notes, control graphs, external and internal test reports and calibration certificates, customers' notes, papers and feedback.

4.13.2.2 Observations, data and calculations shall be recorded at the time they are made and shall be identifiable to the specific task.

4.13.2.3 When mistakes occur in records, each mistake shall be crossed out, not erased, made illegible or deleted, and the correct value entered alongside. All such alterations to records shall be signed or initialled by the person making the correction. In the case of records stored electronically, equivalent measures shall be taken to avoid loss or change of original data.

4.14 Internal audits

4.14.1 The laboratory shall periodically, and in accordance with a predetermined schedule and procedure, conduct internal audits of its activities to verify that its operations continue to comply with the requirements of the management system and this International Standard. The internal audit programme shall address all elements of the management system, including the testing and/or calibration activities. It is the responsibility of the quality manager to plan and organize audits as required by the schedule and requested by management. Such audits shall be carried out by trained and qualified personnel who are, wherever resources permit, independent of the activity to be audited.

NOTE The cycle for internal auditing should normally be completed in one year.

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4.14.2 When audit findings cast doubt on the effectiveness of the operations or on the correctness or validity of the laboratory's test or calibration results, the laboratory shall take timely corrective action, and shall notify customers in writing if investigations show that the laboratory results may have been affected.

4.14.3 The area of activity audited, the audit findings and corrective actions that arise from them shall be recorded.

4.14.4 Follow-up audit activities shall verify and record the implementation and effectiveness of the corrective action taken.

4.15 Management reviews

4.15.1 In accordance with a predetermined schedule and procedure, the laboratory's top management shall periodically conduct a review of the laboratory's management system and testing and/or calibration activities to ensure their continuing suitability and effectiveness, and to introduce necessary changes or improvements. The review shall take account of:

— the suitability of policies and procedures;

— reports from managerial and supervisory personnel;

— the outcome of recent internal audits;

— corrective and preventive actions;

— assessments by external bodies;

— the results of interlaboratory comparisons or proficiency tests;

— changes in the volume and type of the work;

— customer feedback;

— complaints;

— recommendations for improvement;

— other relevant factors, such as quality control activities, resources and staff training.

NOTE 1 A typical period for conducting a management review is once every 12 months.

NOTE 2 Results should feed into the laboratory planning system and should include the goals, objectives and action plans for the coming year.

NOTE 3 A management review includes consideration of related subjects at regular management meetings.

4.15.2 Findings from management reviews and the actions that arise from them shall be recorded. The management shall ensure that those actions are carried out within an appropriate and agreed timescale.

5 Technical requirements

5.1 General

5.1.1 Many factors determine the correctness and reliability of the tests and/or calibrations performed by a laboratory. These factors include contributions from:

— human factors (5.2);

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— accommodation and environmental conditions (5.3);

— test and calibration methods and method validation (5.4);

— equipment (5.5);

— measurement traceability (5.6);

— sampling (5.7);

— the handling of test and calibration items (5.8).

5.1.2 The extent to which the factors contribute to the total uncertainty of measurement differs considerably between (types of) tests and between (types of) calibrations. The laboratory shall take account of these factors in developing test and calibration methods and procedures, in the training and qualification of personnel, and in the selection and calibration of the equipment it uses.

5.2 Personnel

5.2.1 The laboratory management shall ensure the competence of all who operate specific equipment, perform tests and/or calibrations, evaluate results, and sign test reports and calibration certificates. When using staff who are undergoing training, appropriate supervision shall be provided. Personnel performing specific tasks shall be qualified on the basis of appropriate education, training, experience and/or demonstrated skills, as required.

NOTE 1 In some technical areas (e.g. non-destructive testing) it may be required that the personnel performing certain tasks hold personnel certification. The laboratory is responsible for fulfilling specified personnel certification requirements. The requirements for personnel certification might be regulatory, included in the standards for the specific technical field, or required by the customer.

NOTE 2 The personnel responsible for the opinions and interpretation included in test reports should, in addition to the appropriate qualifications, training, experience and satisfactory knowledge of the testing carried out, also have:

— relevant knowledge of the technology used for the manufacturing of the items, materials, products, etc. tested, or the way they are used or intended to be used, and of the defects or degradations which may occur during or in service;

— knowledge of the general requirements expressed in the legislation and standards; and

— an understanding of the significance of deviations found with regard to the normal use of the items, materials, products, etc. concerned.

5.2.2 The management of the laboratory shall formulate the goals with respect to the education, training and skills of the laboratory personnel. The laboratory shall have a policy and procedures for identifying training needs and providing training of personnel. The training programme shall be relevant to the present and anticipated tasks of the laboratory. The effectiveness of the training actions taken shall be evaluated.

5.2.3 The laboratory shall use personnel who are employed by, or under contract to, the laboratory. Where contracted and additional technical and key support personnel are used, the laboratory shall ensure that such personnel are supervised and competent and that they work in accordance with the laboratory's management system.

5.2.4 The laboratory shall maintain current job descriptions for managerial, technical and key support personnel involved in tests and/or calibrations.

NOTE Job descriptions can be defined in many ways. As a minimum, the following should be defined:

— the responsibilities with respect to performing tests and/or calibrations;

— the responsibilities with respect to the planning of tests and/or calibrations and evaluation of results;

— the responsibilities for reporting opinions and interpretations;

— the responsibilities with respect to method modification and development and validation of new methods;

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— expertise and experience required;

— qualifications and training programmes;

— managerial duties.

5.2.5 The management shall authorize specific personnel to perform particular types of sampling, test and/or calibration, to issue test reports and calibration certificates, to give opinions and interpretations and to operate particular types of equipment. The laboratory shall maintain records of the relevant authorization(s), competence, educational and professional qualifications, training, skills and experience of all technical personnel, including contracted personnel. This information shall be readily available and shall include the date on which authorization and/or competence is confirmed.

5.3 Accommodation and environmental conditions

5.3.1 Laboratory facilities for testing and/or calibration, including but not limited to energy sources, lighting and environmental conditions, shall be such as to facilitate correct performance of the tests and/or calibrations.

The laboratory shall ensure that the environmental conditions do not invalidate the results or adversely affect the required quality of any measurement. Particular care shall be taken when sampling and tests and/or calibrations are undertaken at sites other than a permanent laboratory facility. The technical requirements for accommodation and environmental conditions that can affect the results of tests and calibrations shall be documented.

5.3.2 The laboratory shall monitor, control and record environmental conditions as required by the relevant specifications, methods and procedures or where they influence the quality of the results. Due attention shall be paid, for example, to biological sterility, dust, electromagnetic disturbances, radiation, humidity, electrical supply, temperature, and sound and vibration levels, as appropriate to the technical activities concerned. Tests and calibrations shall be stopped when the environmental conditions jeopardize the results of the tests and/or calibrations.

5.3.3 There shall be effective separation between neighbouring areas in which there are incompatible activities. Measures shall be taken to prevent cross-contamination.

5.3.4 Access to and use of areas affecting the quality of the tests and/or calibrations shall be controlled. The laboratory shall determine the extent of control based on its particular circumstances.

5.3.5 Measures shall be taken to ensure good housekeeping in the laboratory. Special procedures shall be prepared where necessary.

5.4 Test and calibration methods and method validation

5.4.1 General

The laboratory shall use appropriate methods and procedures for all tests and/or calibrations within its scope. These include sampling, handling, transport, storage and preparation of items to be tested and/or calibrated, and, where appropriate, an estimation of the measurement uncertainty as well as statistical techniques for analysis of test and/or calibration data.

The laboratory shall have instructions on the use and operation of all relevant equipment, and on the handling and preparation of items for testing and/or calibration, or both, where the absence of such instructions could jeopardize the results of tests and/or calibrations. All instructions, standards, manuals and reference data relevant to the work of the laboratory shall be kept up to date and shall be made readily available to personnel (see 4.3). Deviation from test and calibration methods shall occur only if the deviation has been documented, technically justified, authorized, and accepted by the customer.

NOTE International, regional or national standards or other recognized specifications that contain sufficient and concise information on how to perform the tests and/or calibrations do not need to be supplemented or rewritten as internal procedures if these standards are written in a way that they can be used as published by the operating staff in a laboratory. It may be necessary to provide additional documentation for optional steps in the method or additional details.

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5.4.2 Selection of methods

The laboratory shall use test and/or calibration methods, including methods for sampling, which meet the needs of the customer and which are appropriate for the tests and/or calibrations it undertakes. Methods published in international, regional or national standards shall preferably be used. The laboratory shall ensure that it uses the latest valid edition of a standard unless it is not appropriate or possible to do so. When necessary, the standard shall be supplemented with additional details to ensure consistent application.

When the customer does not specify the method to be used, the laboratory shall select appropriate methods that have been published either in international, regional or national standards, or by reputable technical organizations, or in relevant scientific texts or journals, or as specified by the manufacturer of the equipment. Laboratory-developed methods or methods adopted by the laboratory may also be used if they are appropriate for the intended use and if they are validated. The customer shall be informed as to the method chosen. The laboratory shall confirm that it can properly operate standard methods before introducing the tests or calibrations. If the standard method changes, the confirmation shall be repeated.

The laboratory shall inform the customer when the method proposed by the customer is considered to be inappropriate or out of date.

5.4.3 Laboratory-developed methods

The introduction of test and calibration methods developed by the laboratory for its own use shall be a planned activity and shall be assigned to qualified personnel equipped with adequate resources.

Plans shall be updated as development proceeds and effective communication amongst all personnel involved shall be ensured.

5.4.4 Non-standard methods

When it is necessary to use methods not covered by standard methods, these shall be subject to agreement with the customer and shall include a clear specification of the customer's requirements and the purpose of the test and/or calibration. The method developed shall have been validated appropriately before use.

NOTE For new test and/or calibration methods, procedures should be developed prior to the tests and/or calibrations being performed and should contain at least the following information:

a) appropriate identification;

b) scope;

c) description of the type of item to be tested or calibrated;

d) parameters or quantities and ranges to be determined;

e) apparatus and equipment, including technical performance requirements;

f) reference standards and reference materials required;

g) environmental conditions required and any stabilization period needed;

h) description of the procedure, including

- affixing of identification marks, handling, transporting, storing and preparation of items,
- checks to be made before the work is started,
- checks that the equipment is working properly and, where required, calibration and adjustment of the equipment before each use,
- the method of recording the observations and results,
- any safety measures to be observed;

i) criteria and/or requirements for approval/rejection;

j) data to be recorded and method of analysis and presentation;

k) the uncertainty or the procedure for estimating uncertainty.

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5.4.5 Validation of methods

5.4.5.1 Validation is the confirmation by examination and the provision of objective evidence that the particular requirements for a specific intended use are fulfilled.

5.4.5.2 The laboratory shall validate non-standard methods, laboratory-designed/developed methods, standard methods used outside their intended scope, and amplifications and modifications of standard methods to confirm that the methods are fit for the intended use. The validation shall be as extensive as is necessary to meet the needs of the given application or field of application. The laboratory shall record the results obtained, the procedure used for the validation, and a statement as to whether the method is fit for the intended use.

NOTE 1 Validation may include procedures for sampling, handling and transportation.

NOTE 2 The techniques used for the determination of the performance of a method should be one of, or a combination of, the following:

— calibration using reference standards or reference materials;

— comparison of results achieved with other methods;

— interlaboratory comparisons;

— systematic assessment of the factors influencing the result;

— assessment of the uncertainty of the results based on scientific understanding of the theoretical principles of the method and practical experience.

NOTE 3 When some changes are made in the validated non-standard methods, the influence of such changes should be documented and, if appropriate, a new validation should be carried out.

5.4.5.3 The range and accuracy of the values obtainable from validated methods (e.g. the uncertainty of the results, detection limit, selectivity of the method, linearity, limit of repeatability and/or reproducibility, robustness against external influences and/or cross-sensitivity against interference from the matrix of the sample/test object), as assessed for the intended use, shall be relevant to the customers' needs.

NOTE 1 Validation includes specification of the requirements, determination of the characteristics of the methods, a check that the requirements can be fulfilled by using the method, and a statement on the validity.

NOTE 2 As method-development proceeds, regular review should be carried out to verify that the needs of the customer are still being fulfilled. Any change in requirements requiring modifications to the development plan should be approved and authorized.

NOTE 3 Validation is always a balance between costs, risks and technical possibilities. There are many cases in which the range and uncertainty of the values (e.g. accuracy, detection limit, selectivity, linearity, repeatability, reproducibility, robustness and cross-sensitivity) can only be given in a simplified way due to lack of information.

5.4.6 Estimation of uncertainty of measurement

5.4.6.1 A calibration laboratory, or a testing laboratory performing its own calibrations, shall have and shall apply a procedure to estimate the uncertainty of measurement for all calibrations and types of calibrations.

5.4.6.2 Testing laboratories shall have and shall apply procedures for estimating uncertainty of measurement. In certain cases the nature of the test method may preclude rigorous, metrologically and statistically valid, calculation of uncertainty of measurement. In these cases the laboratory shall at least attempt to identify all the components of uncertainty and make a reasonable estimation, and shall ensure that the form of reporting of the result does not give a wrong impression of the uncertainty. Reasonable estimation shall be based on knowledge of the performance of the method and on the measurement scope and shall make use of, for example, previous experience and validation data.

NOTE 1 The degree of rigor needed in an estimation of uncertainty of measurement depends on factors such as:

— the requirements of the test method;

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— the requirements of the customer;

— the existence of narrow limits on which decisions on conformity to a specification are based.

NOTE 2 In those cases where a well-recognized test method specifies limits to the values of the major sources of uncertainty of measurement and specifies the form of presentation of calculated results, the laboratory is considered to have satisfied this clause by following the test method and reporting instructions (see 5.10).

5.4.6.3 When estimating the uncertainty of measurement, all uncertainty components which are of importance in the given situation shall be taken into account using appropriate methods of analysis.

NOTE 1 Sources contributing to the uncertainty include, but are not necessarily limited to, the reference standards and reference materials used, methods and equipment used, environmental conditions, properties and condition of the item being tested or calibrated, and the operator.

NOTE 2 The predicted long-term behaviour of the tested and/or calibrated item is not normally taken into account when estimating the measurement uncertainty.

NOTE 3 For further information, see ISO 5725 and the Guide to the Expression of Uncertainty in Measurement (see Bibliography).

5.4.7 Control of data

5.4.7.1 Calculations and data transfers shall be subject to appropriate checks in a systematic manner.

5.4.7.2 When computers or automated equipment are used for the acquisition, processing, recording, reporting, storage or retrieval of test or calibration data, the laboratory shall ensure that:

a) computer software developed by the user is documented in sufficient detail and is suitably validated as being adequate for use;

b) procedures are established and implemented for protecting the data; such procedures shall include, but not be limited to, integrity and confidentiality of data entry or collection, data storage, data transmission and data processing;

c) computers and automated equipment are maintained to ensure proper functioning and are provided with the environmental and operating conditions necessary to maintain the integrity of test and calibration data.

NOTE Commercial off-the-shelf software (e.g. wordprocessing, database and statistical programmes) in general use within their designed application range may be considered to be sufficiently validated. However, laboratory software configuration/modifications should be validated as in 5.4.7.2 a).

5.5 Equipment

5.5.1 The laboratory shall be furnished with all items of sampling, measurement and test equipment required for the correct performance of the tests and/or calibrations (including sampling, preparation of test and/or calibration items, processing and analysis of test and/or calibration data). In those cases where the laboratory needs to use equipment outside its permanent control, it shall ensure that the requirements of this International Standard are met.

5.5.2 Equipment and its software used for testing, calibration and sampling shall be capable of achieving the accuracy required and shall comply with specifications relevant to the tests and/or calibrations concerned. Calibration programmes shall be established for key quantities or values of the instruments where these properties have a significant effect on the results. Before being placed into service, equipment (including that used for sampling) shall be calibrated or checked to establish that it meets the laboratory's specification requirements and complies with the relevant standard specifications. It shall be checked and/or calibrated before use (see 5.6).

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5.5.3 Equipment shall be operated by authorized personnel. Up-to-date instructions on the use and maintenance of equipment (including any relevant manuals provided by the manufacturer of the equipment) shall be readily available for use by the appropriate laboratory personnel.

5.5.4 Each item of equipment and its software used for testing and calibration and significant to the result shall, when practicable, be uniquely identified.

5.5.5 Records shall be maintained of each item of equipment and its software significant to the tests and/or calibrations performed. The records shall include at least the following:

a) the identity of the item of equipment and its software;

b) the manufacturer's name, type identification, and serial number or other unique identification;

c) checks that equipment complies with the specification (see 5.5.2);

d) the current location, where appropriate;

e) the manufacturer's instructions, if available, or reference to their location;

f) dates, results and copies of reports and certificates of all calibrations, adjustments, acceptance criteria, and the due date of next calibration;

g) the maintenance plan, where appropriate, and maintenance carried out to date;

h) any damage, malfunction, modification or repair to the equipment.

5.5.6 The laboratory shall have procedures for safe handling, transport, storage, use and planned maintenance of measuring equipment to ensure proper functioning and in order to prevent contamination or deterioration.

NOTE Additional procedures may be necessary when measuring equipment is used outside the permanent laboratory for tests, calibrations or sampling.

5.5.7 Equipment that has been subjected to overloading or mishandling, gives suspect results, or has been shown to be defective or outside specified limits, shall be taken out of service. It shall be isolated to prevent its use or clearly labelled or marked as being out of service until it has been repaired and shown by calibration or test to perform correctly. The laboratory shall examine the effect of the defect or departure from specified limits on previous tests and/or calibrations and shall institute the "Control of nonconforming work" procedure (see 4.9).

5.5.8 Whenever practicable, all equipment under the control of the laboratory and requiring calibration shall be labelled, coded or otherwise identified to indicate the status of calibration, including the date when last calibrated and the date or expiration criteria when recalibration is due.

5.5.9 When, for whatever reason, equipment goes outside the direct control of the laboratory, the laboratory shall ensure that the function and calibration status of the equipment are checked and shown to be satisfactory before the equipment is returned to service.

5.5.10 When intermediate checks are needed to maintain confidence in the calibration status of the equipment, these checks shall be carried out according to a defined procedure.

5.5.11 Where calibrations give rise to a set of correction factors, the laboratory shall have procedures to ensure that copies (e.g. in computer software) are correctly updated.

5.5.12 Test and calibration equipment, including both hardware and software, shall be safeguarded from adjustments which would invalidate the test and/or calibration results.

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5.6 Measurement traceability

5.6.1 General

All equipment used for tests and/or calibrations, including equipment for subsidiary measurements (e.g. for environmental conditions) having a significant effect on the accuracy or validity of the result of the test, calibration or sampling shall be calibrated before being put into service. The laboratory shall have an established programme and procedure for the calibration of its equipment.

NOTE Such a programme should include a system for selecting, using, calibrating, checking, controlling and maintaining measurement standards, reference materials used as measurement standards, and measuring and test equipment used to perform tests and calibrations.

5.6.2 Specific requirements

5.6.2.1 Calibration

5.6.2.1.1 For calibration laboratories, the programme for calibration of equipment shall be designed and operated so as to ensure that calibrations and measurements made by the laboratory are traceable to the International System of Units (SI) (*Système international d'unités*).

A calibration laboratory establishes traceability of its own measurement standards and measuring instruments to the SI by means of an unbroken chain of calibrations or comparisons linking them to relevant primary standards of the SI units of measurement. The link to SI units may be achieved by reference to national measurement standards. National measurement standards may be primary standards, which are primary realizations of the SI units or agreed representations of SI units based on fundamental physical constants, or they may be secondary standards which are standards calibrated by another national metrology institute. When using external calibration services, traceability of measurement shall be assured by the use of calibration services from laboratories that can demonstrate competence, measurement capability and traceability. The calibration certificates issued by these laboratories shall contain the measurement results, including the measurement uncertainty and/or a statement of compliance with an identified metrological specification (see also 5.10.4.2).

NOTE 1 Calibration laboratories fulfilling the requirements of this International Standard are considered to be competent. A calibration certificate bearing an accreditation body logo from a calibration laboratory accredited to this International Standard, for the calibration concerned, is sufficient evidence of traceability of the calibration data reported.

NOTE 2 Traceability to SI units of measurement may be achieved by reference to an appropriate primary standard (see VIM:1993, 6.4) or by reference to a natural constant, the value of which in terms of the relevant SI unit is known and recommended by the General Conference of Weights and Measures (CGPM) and the International Committee for Weights and Measures (CIPM).

NOTE 3 Calibration laboratories that maintain their own primary standard or representation of SI units based on fundamental physical constants can claim traceability to the SI system only after these standards have been compared, directly or indirectly, with other similar standards of a national metrology institute.

NOTE 4 The term "identified metrological specification" means that it must be clear from the calibration certificate which specification the measurements have been compared with, by including the specification or by giving an unambiguous reference to the specification.

NOTE 5 When the terms "international standard" or "national standard" are used in connection with traceability, it is assumed that these standards fulfil the properties of primary standards for the realization of SI units.

NOTE 6 Traceability to national measurement standards does not necessarily require the use of the national metrology institute of the country in which the laboratory is located.

NOTE 7 If a calibration laboratory wishes or needs to obtain traceability from a national metrology institute other than in its own country, this laboratory should select a national metrology institute that actively participates in the activities of BIPM either directly or through regional groups.

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NOTE 8 The unbroken chain of calibrations or comparisons may be achieved in several steps carried out by different laboratories that can demonstrate traceability.

5.6.2.1.2 There are certain calibrations that currently cannot be strictly made in SI units. In these cases calibration shall provide confidence in measurements by establishing traceability to appropriate measurement standards such as:

— the use of certified reference materials provided by a competent supplier to give a reliable physical or chemical characterization of a material;

— the use of specified methods and/or consensus standards that are clearly described and agreed by all parties concerned.

Participation in a suitable programme of interlaboratory comparisons is required where possible.

5.6.2.2 Testing

5.6.2.2.1 For testing laboratories, the requirements given in 5.6.2.1 apply for measuring and test equipment with measuring functions used, unless it has been established that the associated contribution from the calibration contributes little to the total uncertainty of the test result. When this situation arises, the laboratory shall ensure that the equipment used can provide the uncertainty of measurement needed.

NOTE The extent to which the requirements in 5.6.2.1 should be followed depends on the relative contribution of the calibration uncertainty to the total uncertainty. If calibration is the dominant factor, the requirements should be strictly followed.

5.6.2.2.2 Where traceability of measurements to SI units is not possible and/or not relevant, the same requirements for traceability to, for example, certified reference materials, agreed methods and/or consensus standards, are required as for calibration laboratories (see 5.6.2.1.2).

5.6.3 Reference standards and reference materials

5.6.3.1 Reference standards

The laboratory shall have a programme and procedure for the calibration of its reference standards. Reference standards shall be calibrated by a body that can provide traceability as described in 5.6.2.1. Such reference standards of measurement held by the laboratory shall be used for calibration only and for no other purpose, unless it can be shown that their performance as reference standards would not be invalidated. Reference standards shall be calibrated before and after any adjustment.

5.6.3.2 Reference materials

Reference materials shall, where possible, be traceable to SI units of measurement, or to certified reference materials. Internal reference materials shall be checked as far as is technically and economically practicable.

5.6.3.3 Intermediate checks

Checks needed to maintain confidence in the calibration status of reference, primary, transfer or working standards and reference materials shall be carried out according to defined procedures and schedules.

5.6.3.4 Transport and storage

The laboratory shall have procedures for safe handling, transport, storage and use of reference standards and reference materials in order to prevent contamination or deterioration and in order to protect their integrity.

NOTE Additional procedures may be necessary when reference standards and reference materials are used outside the permanent laboratory for tests, calibrations or sampling.

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5.7 Sampling

5.7.1 The laboratory shall have a sampling plan and procedures for sampling when it carries out sampling of substances, materials or products for subsequent testing or calibration. The sampling plan as well as the sampling procedure shall be available at the location where sampling is undertaken. Sampling plans shall, whenever reasonable, be based on appropriate statistical methods. The sampling process shall address the factors to be controlled to ensure the validity of the test and calibration results.

NOTE 1 Sampling is a defined procedure whereby a part of a substance, material or product is taken to provide for testing or calibration of a representative sample of the whole. Sampling may also be required by the appropriate specification for which the substance, material or product is to be tested or calibrated. In certain cases (e.g. forensic analysis), the sample may not be representative but is determined by availability.

NOTE 2 Sampling procedures should describe the selection, sampling plan, withdrawal and preparation of a sample or samples from a substance, material or product to yield the required information.

5.7.2 Where the customer requires deviations, additions or exclusions from the documented sampling procedure, these shall be recorded in detail with the appropriate sampling data and shall be included in all documents containing test and/or calibration results, and shall be communicated to the appropriate personnel.

5.7.3 The laboratory shall have procedures for recording relevant data and operations relating to sampling that forms part of the testing or calibration that is undertaken. These records shall include the sampling procedure used, the identification of the sampler, environmental conditions (if relevant) and diagrams or other equivalent means to identify the sampling location as necessary and, if appropriate, the statistics the sampling procedures are based upon.

5.8 Handling of test and calibration items

5.8.1 The laboratory shall have procedures for the transportation, receipt, handling, protection, storage, retention and/or disposal of test and/or calibration items, including all provisions necessary to protect the integrity of the test or calibration item, and to protect the interests of the laboratory and the customer.

5.8.2 The laboratory shall have a system for identifying test and/or calibration items. The identification shall be retained throughout the life of the item in the laboratory. The system shall be designed and operated so as to ensure that items cannot be confused physically or when referred to in records or other documents. The system shall, if appropriate, accommodate a sub-division of groups of items and the transfer of items within and from the laboratory.

5.8.3 Upon receipt of the test or calibration item, abnormalities or departures from normal or specified conditions, as described in the test or calibration method, shall be recorded. When there is doubt as to the suitability of an item for test or calibration, or when an item does not conform to the description provided, or the test or calibration required is not specified in sufficient detail, the laboratory shall consult the customer for further instructions before proceeding and shall record the discussion.

5.8.4 The laboratory shall have procedures and appropriate facilities for avoiding deterioration, loss or damage to the test or calibration item during storage, handling and preparation. Handling instructions provided with the item shall be followed. When items have to be stored or conditioned under specified environmental conditions, these conditions shall be maintained, monitored and recorded. Where a test or calibration item or a portion of an item is to be held secure, the laboratory shall have arrangements for storage and security that protect the condition and integrity of the secured items or portions concerned.

NOTE 1 Where test items are to be returned into service after testing, special care is required to ensure that they are not damaged or injured during the handling, testing or storing/waiting processes.

NOTE 2 A sampling procedure and information on storage and transport of samples, including information on sampling factors influencing the test or calibration result, should be provided to those responsible for taking and transporting the samples.

NOTE 3 Reasons for keeping a test or calibration item secure can be for reasons of record, safety or value, or to enable complementary tests and/or calibrations to be performed later.

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5.9 Assuring the quality of test and calibration results

5.9.1 The laboratory shall have quality control procedures for monitoring the validity of tests and calibrations undertaken. The resulting data shall be recorded in such a way that trends are detectable and, where practicable, statistical techniques shall be applied to the reviewing of the results. This monitoring shall be planned and reviewed and may include, but not be limited to, the following:

a) regular use of certified reference materials and/or internal quality control using secondary reference materials;

b) participation in interlaboratory comparison or proficiency-testing programmes;

c) replicate tests or calibrations using the same or different methods;

d) retesting or recalibration of retained items;

e) correlation of results for different characteristics of an item.

NOTE The selected methods should be appropriate for the type and volume of the work undertaken.

5.9.2 Quality control data shall be analysed and, where they are found to be outside pre-defined criteria, planned action shall be taken to correct the problem and to prevent incorrect results from being reported.

5.10 Reporting the results

5.10.1 General

The results of each test, calibration, or series of tests or calibrations carried out by the laboratory shall be reported accurately, clearly, unambiguously and objectively, and in accordance with any specific instructions in the test or calibration methods.

The results shall be reported, usually in a test report or a calibration certificate (see Note 1), and shall include all the information requested by the customer and necessary for the interpretation of the test or calibration results and all information required by the method used. This information is normally that required by 5.10.2, and 5.10.3 or 5.10.4.

In the case of tests or calibrations performed for internal customers, or in the case of a written agreement with the customer, the results may be reported in a simplified way. Any information listed in 5.10.2 to 5.10.4 which is not reported to the customer shall be readily available in the laboratory which carried out the tests and/or calibrations.

NOTE 1 Test reports and calibration certificates are sometimes called test certificates and calibration reports, respectively.

NOTE 2 The test reports or calibration certificates may be issued as hard copy or by electronic data transfer provided that the requirements of this International Standard are met.

5.10.2 Test reports and calibration certificates

Each test report or calibration certificate shall include at least the following information, unless the laboratory has valid reasons for not doing so:

a) a title (e.g. "Test Report" or "Calibration Certificate");

b) the name and address of the laboratory, and the location where the tests and/or calibrations were carried out, if different from the address of the laboratory;

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c) unique identification of the test report or calibration certificate (such as the serial number), and on each page an identification in order to ensure that the page is recognized as a part of the test report or calibration certificate, and a clear identification of the end of the test report or calibration certificate;

d) the name and address of the customer;

e) identification of the method used;

f) a description of, the condition of, and unambiguous identification of the item(s) tested or calibrated;

g) the date of receipt of the test or calibration item(s) where this is critical to the validity and application of the results, and the date(s) of performance of the test or calibration;

h) reference to the sampling plan and procedures used by the laboratory or other bodies where these are relevant to the validity or application of the results;

i) the test or calibration results with, where appropriate, the units of measurement;

j) the name(s), function(s) and signature(s) or equivalent identification of person(s) authorizing the test report or calibration certificate;

k) where relevant, a statement to the effect that the results relate only to the items tested or calibrated.

NOTE 1 Hard copies of test reports and calibration certificates should also include the page number and total number of pages.

NOTE 2 It is recommended that laboratories include a statement specifying that the test report or calibration certificate shall not be reproduced except in full, without written approval of the laboratory.

5.10.3 Test reports

5.10.3.1 In addition to the requirements listed in 5.10.2, test reports shall, where necessary for the interpretation of the test results, include the following:

a) deviations from, additions to, or exclusions from the test method, and information on specific test conditions, such as environmental conditions;

b) where relevant, a statement of compliance/non-compliance with requirements and/or specifications;

c) where applicable, a statement on the estimated uncertainty of measurement; information on uncertainty is needed in test reports when it is relevant to the validity or application of the test results, when a customer's instruction so requires, or when the uncertainty affects compliance to a specification limit;

d) where appropriate and needed, opinions and interpretations (see 5.10.5);

e) additional information which may be required by specific methods, customers or groups of customers.

5.10.3.2 In addition to the requirements listed in 5.10.2 and 5.10.3.1, test reports containing the results of sampling shall include the following, where necessary for the interpretation of test results:

a) the date of sampling;

b) unambiguous identification of the substance, material or product sampled (including the name of the manufacturer, the model or type of designation and serial numbers as appropriate);

c) the location of sampling, including any diagrams, sketches or photographs;

d) a reference to the sampling plan and procedures used;

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e) details of any environmental conditions during sampling that may affect the interpretation of the test results;

f) any standard or other specification for the sampling method or procedure, and deviations, additions to or exclusions from the specification concerned.

5.10.4 Calibration certificates

5.10.4.1 In addition to the requirements listed in 5.10.2, calibration certificates shall include the following, where necessary for the interpretation of calibration results:

a) the conditions (e.g. environmental) under which the calibrations were made that have an influence on the measurement results;

b) the uncertainty of measurement and/or a statement of compliance with an identified metrological specification or clauses thereof;

c) evidence that the measurements are traceable (see Note 2 in 5.6.2.1.1).

5.10.4.2 The calibration certificate shall relate only to quantities and the results of functional tests. If a statement of compliance with a specification is made, this shall identify which clauses of the specification are met or not met.

When a statement of compliance with a specification is made omitting the measurement results and associated uncertainties, the laboratory shall record those results and maintain them for possible future reference.

When statements of compliance are made, the uncertainty of measurement shall be taken into account.

5.10.4.3 When an instrument for calibration has been adjusted or repaired, the calibration results before and after adjustment or repair, if available, shall be reported.

5.10.4.4 A calibration certificate (or calibration label) shall not contain any recommendation on the calibration interval except where this has been agreed with the customer. This requirement may be superseded by legal regulations.

5.10.5 Opinions and interpretations

When opinions and interpretations are included, the laboratory shall document the basis upon which the opinions and interpretations have been made. Opinions and interpretations shall be clearly marked as such in a test report.

NOTE 1 Opinions and interpretations should not be confused with inspections and product certifications as intended in ISO/IEC 17020 and ISO/IEC Guide 65.

NOTE 2 Opinions and interpretations included in a test report may comprise, but not be limited to, the following:

— an opinion on the statement of compliance/noncompliance of the results with requirements;

— fulfilment of contractual requirements;

— recommendations on how to use the results;

— guidance to be used for improvements.

NOTE 3 In many cases it might be appropriate to communicate the opinions and interpretations by direct dialogue with the customer. Such dialogue should be written down.

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5.10.6 Testing and calibration results obtained from subcontractors

When the test report contains results of tests performed by subcontractors, these results shall be clearly identified. The subcontractor shall report the results in writing or electronically.

When a calibration has been subcontracted, the laboratory performing the work shall issue the calibration certificate to the contracting laboratory.

5.10.7 Electronic transmission of results

In the case of transmission of test or calibration results by telephone, telex, facsimile or other electronic or electromagnetic means, the requirements of this International Standard shall be met (see also 5.4.7).

5.10.8 Format of reports and certificates

The format shall be designed to accommodate each type of test or calibration carried out and to minimize the possibility of misunderstanding or misuse.

NOTE 1 Attention should be given to the lay-out of the test report or calibration certificate, especially with regard to the presentation of the test or calibration data and ease of assimilation by the reader.

NOTE 2 The headings should be standardized as far as possible.

5.10.9 Amendments to test reports and calibration certificates

Material amendments to a test report or calibration certificate after issue shall be made only in the form of a further document, or data transfer, which includes the statement:

"Supplement to Test Report [or Calibration Certificate], serial number... [or as otherwise identified]",

or an equivalent form of wording.

Such amendments shall meet all the requirements of this International Standard.

When it is necessary to issue a complete new test report or calibration certificate, this shall be uniquely identified and shall contain a reference to the original that it replaces.

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Annex A
(informative)

Nominal cross-references to ISO 9001:2000

Table A.1 — Nominal cross-references to ISO 9001:2000

ISO 9001:2000	ISO/IEC 17025
Clause 1	Clause 1
Clause 2	Clause 2
Clause 3	Clause 3
4.1	4.1, 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5, 4.2, 4.2.1, 4.2.2, 4.2.3, 4.2.4
4.2 1	4.2.2, 4.2.3, 4.3.1
4.2.2	4.2.2, 4.2.3, 4.2.4
4.2.3	4.3
4.2.4	4.3.1, 4.12
5.1	4.2.2, 4.2.3
5.1 a)	4.1.2, 4.1.6
5.1 b)	4.2.2
5.1 c)	4.2.2
5.1 d)	4.15
5.1 e)	4.1.5
5.2	4.4.1
5.3	4.2.2
5.3 a)	4.2.2
5.3 b)	4.2.3
5.3 c)	4.2.2
5.3 d)	4.2.2
5.3 e)	4.2.2
5.4.1	4.2.2 c)
5.4.2	4.2.1
5.4.2 a)	4.2.1
5.4.2 b)	4.2.1
5.5.1	4.1.5 a), f), h)
5.5.2	4.1.5 i)
5.5.2 a)	4.1.5 i)
5.5.2 b)	4.11.1
5.5.2 c)	4.2.4
5.5.3	4.1.6
5.6.1	4.15
5.6.2	4.15
5.6.3	4.15

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ISO 9001:2000	ISO/IEC 17025
6.1 a)	4.10
6.1 b)	4.4.1, 4.7, 5.4.2, 5.4.3, 5.4.4, 5.10.1
6.2.1	5.2.1
6.2.2 a)	5.2.2, 5.5.3
6.2.2 b)	5.2.1, 5.2.2
6.2.2 c)	5.2.2
6.2.2 d)	4.1.5 k)
6.2.2 e)	5.2.5
6.3.1 a)	4.1.3, 4.12.1.2, 4.12.1.3, 5.3
6.3.1 b)	4.12.1.4, 5.4.7.2, 5.5, 5.6
6.3.1 c)	4.6, 5.5.6, 5.6.3.4, 5.8, 5.10
6.4	5.3.1, 5.3.2, 5.3.3, 5.3.4, 5.3.5
7.1	5.1
7.1 a)	4.2.2
7.1 b)	4.1.5 a), 4.2.1, 4.2.3
7.1 c)	5.4, 5.9
7.1 d)	4.1, 5.4, 5.9
7.2.1	4.4.1, 4.4.2, 4.4.3, 4.4.4, 4.4.5, 5.4, 5.9, 5.10
7.2.2	4.4.1, 4.4.2, 4.4.3, 4.4.4, 4.4.5, 5.4, 5.9, 5.10
7.2.3	4.4.2, 4.4.4, 4.5, 4.7, 4.8
7.3	5, 5.4, 5.9
7.4.1	4.6.1, 4.6.2, 4.6.4
7.4.2	4.6.3
7.4.3	4.6.2
7.5.1	5.1, 5.2, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9
7.5.2	5.2.5, 5.4.2, 5.4.5
7.5.3	5.8.2
7.5.4	4.1.5 c), 5.8
7.5.5	4.6.1, 4.12, 5.8, 5.10
7.6	5.4, 5.5
8.1	4.10, 5.4, 5.9
8.2.1	4.10
8.2.2	4.11.5, 4.14
8.2.3	4.11.5, 4.14, 5.9
8.2.4	4.5, 4.6, 4.9, 5.5.2, 5.5.9, 5.8, 5.8.3, 5.8.4, 5.9
8.3	4.9
8.4	4.10, 5.9
8.5.1	4.10, 4.12
8.5.2	4.11, 4.12
8.5.3	4.9, 4.11, 4.12

ISO/IEC 17025 covers several technical competence requirements that are not covered by ISO 9001:2000.

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Annex B
(informative)

Guidelines for establishing applications for specific fields

B.1 The requirements specified in this International Standard are stated in general terms and, while they are applicable to all test and calibration laboratories, explanations might be needed. Such explanations on applications are herein referred to as applications. Applications should not include additional general requirements not included in this International Standard.

B.2 Applications can be thought of as an elaboration of the generally stated criteria (requirements) of this International Standard for specified fields of test and calibration, test technologies, products, materials or specific tests or calibrations. Accordingly, applications should be established by persons having appropriate technical knowledge and experience, and should address items that are essential or most important for the proper conduct of a test or calibration.

B.3 Depending on the application at hand, it may be necessary to establish applications for the technical requirements of this International Standard. Establishing applications may be accomplished by simply providing detail or adding extra information to the already generally stated requirements in each of the clauses (e.g. specific limitations to the temperature and humidity in the laboratory).

In some cases the applications will be quite limited, applying only to a given test or calibration method or to a group of calibration or test methods. In other cases the applications may be quite broad, applying to the testing or calibration of various products or items or to entire fields of testing or calibration.

B.4 If the applications apply to a group of test or calibration methods in an entire technical field, common wording should be used for all of the methods.

Alternatively, it may be necessary to develop a separate document of applications to supplement this International Standard for specific types or groups of tests or calibrations, products, materials or technical fields of tests or calibrations. Such a document should provide only the necessary supplementary information, while maintaining this International Standard as the governing document through reference. Applications which are too specific should be avoided in order to limit the proliferation of detailed documents.

B.5 The guidance in this annex should be used by accreditation bodies and other types of evaluation bodies when they develop applications for their own purposes (e.g. accreditation in specific areas).

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[14] ISO Guide 31, *Reference materials — Contents of certificates and labels*

[15] ISO Guide 32, *Calibration in analytical chemistry and use of certified reference materials*

[16] ISO Guide 33, *Uses of certified reference materials*

[17] ISO Guide 34, *General requirements for the competence of reference material producers*

[18] ISO Guide 35, *Certification of reference materials — General and statistical principles*

[19] ISO/IEC Guide 43-1, *Proficiency testing by interlaboratory comparisons — Part 1: Development and operation of proficiency testing schemes*

[20] ISO/IEC Guide 43-2, *Proficiency testing by interlaboratory comparisons — Part 2: Selection and use of proficiency testing schemes by laboratory accreditation bodies*

1) To be published. (Revision of ISO 9000:2000)

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[21] ISO/IEC Guide 58:1993, *Calibration and testing laboratory accreditation systems — General requirements for operation and recognition*

[22] ISO/IEC Guide 65, *General requirements for bodies operating product certification systems*

[23] GUM, *Guide to the Expression of Uncertainty in Measurement*, issued by BIPM, IEC, IFCC, ISO, IUPAC, IUPAP and OIML

[24] Information and documents on laboratory accreditation can be found on the ILAC (International Laboratory Accreditation Cooperation): www.ilac.org

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